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Development of Hungarian Copyright Law

2014

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Preface

The present monograph has set the aim of providing the presentation and analysis of the development of Hungarian copyright law from the beginnings in the 19th c. to currently effective inland and Union regulations. In view of the growing importance of this field of law, its analysis in an independent monograph is justified by the fact that—although several commentaries and text books as well as studies focusing on certain specific fields have been published recently—a work giving a full-scope and overall presentation and analysis of the history of the development of Hungarian copyright law has not been issued up to now.

In terms of its structure the work can be divided into two larger parts. The first part focuses on the history of the evolution and regulation of Hungarian copyright law from the age of the Enlightenment to the 20th century, against the backdrop of European development and regulation, and compares domestic and foreign lawmaking. In this part, special attention has been paid to Ferenc Toldy's and Bertalan Szemere's copyright law bills, and a separate chapter discusses the debate of the Hungarian Lawyers' Society held in 1906, which affected the fundaments of the regulation of copyright law, and Elemér Balás P.'s reform proposals. The analysis of this scientific rather than codification history background is meant to present the reform proposals pointing forward in Hungarian copyright law and getting this field of law close to European standards and their relation to effective regulations of relevant periods.

The second much lengthier part explores the history of the development of specific institutions of copyright law in the mirror of our laws, that is, Act XVI of 1884, Act LIV of 1921, Act III of 1969 and Act LXXVI of 1999. As part of that, we shall discuss the basic dogmatical pillars of copyright law, delimitation of moral and economic rights and their increasingly clear separation in specific laws, limitations of copyright law and use contracts. After that, relevant genres regulated separately in specific laws will be addressed one by one, setting out from genres that traditionally fall within the scope of copyright law such as literary, dramatic and musical works, arriving at regulation of issues arising from technological development, such as software related copyright law issues. This part will cover the definition of infringement of copyright as set out in specific laws, regulation of their legal consequences and description of prevailing order of procedure related thereto. Finally, tendencies in the development of effective copyright law will be addressed, with special regard to recent and expected effects of Community law.[1]

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[1] Mauscript finished on April 11, 2012.

I. Introduction

Copyright is the author's or his legal successor's exclusive right over some intellectual product that falls within the scope of literature or art. The long process of the evolution of copyright protection has been influenced by the joint impact of three factors. One of them was the invention of the technology of printing of books, which can be called the physical side, or technical or material circumstance, because the appearance of the possibility of reproduction emphasised—through saleability of intellectual properties—the necessity of protecting personal and intellectual interests.[2] The other factor is a circumstance in the history of ideas: the appearance of individualism. Works of art of the Middle Ages were characterised by anonymity, however, from the Renaissance the subjective element revived, man became an intellectual individual and recognised himself as such. Artists strove for survival and recognition of their name—this change resulted in the subjective side. The third factor, a characteristic of the past two centuries, is the social need for men to become the owner of their intellectual products. This can be considered the consumer side. As demand for intellectual works grew, the necessity of property protection, in addition to intellectual appreciation, came to the front. It was no longer all the same if the profit arising from the work of art landed in the hands of the party entitled to it or an unauthorised person.

One of the primary aims of the regulation of copyright is to encourage creation of intellectual works; it is in this spirit that it acknowledges moral and economic rights for the author's benefit, and thereby advances appreciation, protection of values of national, European and universal culture. At the same time, regulation of copyright law shall create and maintain the critical balance of private and public interest. There is a need for balance between the interests of authors and other right owners as well as users and the general public. Copyright legislation must satisfy lawful needs of education, general education, scientific research and free access to information. Legal regulation must keep up with technological development and must arrange for institutional and procedural conditions of extensive, efficient enforcement of entitlements too.

Copyright is a partial field of private law; it constitutes security for the legal protection of intellectual products. It provides protection for artistic activity—which creates literary, musical, fine arts, applied arts, applied graphical, photo art, dance art and so-called secondary works (adaptations, translations)—performing arts activities and activities akin to author's creative work. Creators are entitled, on the one hand, to moral rights, which are related to making works public, integrity of the work, exclusivity of use of name and title, and, on the other hand, to economic rights, which apply primarily to author's fee, distribution, reproduction, any form of use of the work. Author's economic rights can be transferred; after the author's death heirs will be entitled to moral rights related to the work for a defined period. Prejudicing any of the rights the author is entitled to constitutes infringement of copyright (usurpation) and involves civil and criminal law sanctions.

Consequently, acknowledgement of intellectual and artistic performance was manifested in the initial obscure legal awareness of this development. The State included the exposition of this legal awareness in its tasks only in the Middle Ages, after printing of books had spread since the new form of disseminating thoughts was of general significance and brought along certain risks. The first protection and limitation of author's rights began with princes' privilege right, which, however, did not extend beyond granting the printing of author's works and prohibition of reprints, and protected and restricted printing of books only. Acknowledgement of the author's independent rights developed only after the fall of the legal system of privileges in England and the French Revolution terminated old feudal rights,

[2] Nizsalovszky 1984. 15.

which was a great breakthrough in the field of author's rights too. So, it is not by chance that acknowledgement of the author's rights on the Continent took place in 1793 in France. In Sweden, the first ordinance on freedom of printing was adopted in 1766 *(Tryckfrihetsförordning)*, which, however, did not apply to works on religious subjects and writings endangering the security of the State, but with respect to other works it terminated censorship and made free political dialogue possible. It can be demonstrated that also in the rest of the States the author's independent power evolved through disintegration of the feudal structure and freedom to communicate thoughts (freedom of the press) was acknowledged too. Copyright itself was part of various licences set out in the right of communicating thoughts.

The first form of independent copyright evolved on the analogy of the right of ownership at the end of the 18th c.; this state in Europe lasted for almost one hundred years. Analogies drawn from right of ownership were certainly suitable for providing protection for author's works in corporeal form for the benefit of the author. Prosecution of reprints of printed literary and musical works, compensation for damage caused by prejudicing rights, exclusion of others from use as well as legal succession through purchase and sale or inheritance could be implemented under this approach to law. Furthermore, it was possible to achieve, which is important in terms of freedom of the press, that the author's power could at last get rid of old privilege and administrative burdens and as an acknowledged private right should be subject to the competence of courts. Yet, it was not suitable for enforcing the author's personal licences or for securing the acknowledged right against immaterial infringements.

In the right of ownership approach, however, copyright could not be protected against distortions at all or only insufficiently by violently bending application of law. Public speeches, theatre plays and musical works were mostly left without protection too. Works of the fine arts (statues, pictures, architectural drawings, applied arts decorations) were also heavily in need of protection, whereas invention of new technological procedures and photography made it easier to infringe (usurp) the author's right.

Both in jurisprudence and practical life it became more and more obvious that the approach to writer's and artistic property rights was untenable along the general development of education, and that the objects of the licences that the author was entitled to in the new state of development included incorporeal goods that could not be protected on the analogy of ownership, whereas their protection was a universal social interest and not just the author's personal legal interest. Rapidly increasing circulation of literary and artisitic works, invention of new forms of reproduction and publication—especially in picture-writing and music—demanded safer regulation of universal social interest against the author.

In time, the right of ownership approach in copyright law failed in jurisprudence and partly in legislation, allowing a new uniform law interpretation to appear, which defined the author's various rights as separate units and (putting aside its old name) used the name copyright. France and England kept to the old approach.

The first resolute step to this effect was made by the Prussian act of 1870, later by the German imperial *Urheberrecht* and the two other acts of 1876 attached to it. The Hungarian act of 1884 on copyright and the Austrian *Urheberrecht* of 1895 were based on them too.

Undoubtedly, by the beginning of the 19th c. the development of copyright had not been completed and the nature and scope of several licences had not been clarified yet through the general acknowledgement and exposition of this highly important legal principle in legislation. New licenses were formulated; likewise, the need for new types of protection arose, especially against usurpation committed by electronic and optical procedures.

It can be also established that both jurisprudence and legislation strove to extend the author's rights, to provide more effective protection for it and to create a closer international legal organisation. The new, independent and uniform copyright law was under the impact of vivid

movement of development in the early 19th c. too; what is more, the reform movement in Italy tried to include all intellectual works in the scope of copyright protection.

In the legal regulation of the given social conditions—as it was acknowledged in the general approach of the period too—the lawmaker has the option to engage certain arbitrariness. The lawmaker's decision is based primarily on the analysis, evaluation of interests related to the given social conditions and efforts to ensure harmony of these interests. Various interests arise concerning intellectual works. The interest of the creators of works is fundamentally important: the need to create the conditions necessary for developing talent, to ensure personal/moral and proper financial/economic acknowledgement related to creation. The user has interests to be appreciated; in case of either artistic or technical works it is an essential interest that use should be unrestricted and secure, and protection should be provided for the disposal over a significant rate of benefit/profit obtained or obtainable through use. It is a lawful interest of society that intellectual works should be created at as high standards and in as great numbers as possible and should be used as extensively as possible. Easy access to works helps education, scientific research. Disposal over intellectual works provides competitive edge; therefore, in using works attention should be paid to competitors' interests too. All these interests cannot be ignored by the law-maker in the regulation of intellectual works. In practice, however, conflicting interests rarely appear in a clear, polarised form; the webs of interests meant to be regulated are complex, coloured by overlapping interests. Theoretically, it is possible to construct a kind of hierarchy of interests; however, the lawmaker's decisions are necessarily some kind of compromise. What is needed is conscious deliberation, comparison of interests; efforts to create harmony between interests must be based on economic and legal policy considerations providing that this requires ceaseless maintenance by the legislator.

The Hungarian regulation of the law of intellectual products, fundamental codes go back to the 19th century. This was justified by the re-regulation of the relevant fields of law. The consequences of the Second World War, the evolution of the centrally controlled socialist economic/social system emphasised this requirement all the more. Obviously, however, the socialist legal system could be built only gradually; and clearly, the law-maker first focused on codification of overall, fundamental codes that affected complete branches of law. In civil law, this was carried out in 1959. Only after that was recodification of other important specific fields of civil law put on the agenda, including norms to regulate intellectual works. In recodification of intellectual works the first great steps were taken in 1969.

Copyright protection is a legal relation of exclusive character, absolute structure. It follows from this that only the obligee of this legal relation—the author, co-author, author's legal successor (right owner)—is a determined person; anybody apart from the author whose obligation has a negative content can be in the obligor's position; he must respect the author's legally protected interests, the relation to his work and must refrain from disturbing it. There is no need for any authority's proceedings, registration for creating copyright protection. This is justified by the role of the subjective aspects of the work, the individual/original character as fundamental criterion, contrary, for example, to the objective character of technical works. Compared to it, copyright protection arises simultaneously with the creation of the work; in case of disputes the court can, as matter of fact, declare that the author of the given work is not the person who was thought to be or who declared himself as such but somebody else.

The content of the author's legal relation is made up by the rights the obligee (copyright owner) is entitled to and the obligations he is bound by. The author is entitled to moral rights and economic rights. It is disputed in theory whether these should be considered independent civic rights or partial rights of a uniform author's civic right. In Hungarian jurisprudence the concept of uniform author's civic right prevails; this is supported also by the inseparable

relation of moral rights and economic interests, the appearance of the given titles as different aspects of the same title.

The essence of copyright is that the user does not get the right of exclusive use of the work directly from the State; instead, he needs to obtain it under private law contract from the author, who is solely entitled to sell his work on the strength of the law. Because of that it was obvious to include the absolute rights on the work in the concept of property, which, on the one hand, made it possible to market them, and, on the other hand, ensured exclusivity of disposal over the work by virtue of traditionally accepted title. The concept of literary and artistic property, however, did not pay regard to the author's personal interests in his work or his right to take action against distortions of the work or to claim authorship or plagiarism. And competing users were against the possibility of creating hereditary market monopoly on the work based on property, as earlier at the time of privileges. However, temporal restriction of intellectual property was in conflict with the essence of the private law property concept. This way, from the outset, ownership qualification of copyright was disputed in terms of both its content and form of exercise.

Copyright is the author's licence to his thought expressed externally, usually by punctuation marks, picture representation, words or music, which can be considered a work. The essence of this licence is that solely the author has the right to make public, publish, duplicate/reproduce, present, perform or cause to perform his work and to enjoy the benefits arising therefrom, and the author has the right to transfer his such exclusive right to other persons either in whole or in part. Exclusivity involves the right to translate the work into other languages and to adapt it to other genres. These licences are partly of personal property right nature and are to be protected alike. Furthermore, the author has the right to withdraw his published work, forbid other persons to publish it, even to exclude the State from the above.

It follows from the author's moral rights that he can determine the form of publishing his work, and whether he publishes his work under his own name, pseudonym or anonymously, and under what title. Anybody who does not take this right of the author into consideration and publishes his anonymous work, for example, under the author's name or uses other names (publisher) prejudices the author's moral rights to his work. Also, the author has moral rights to publish his work in the form determined by him, without any changes. The publisher or other legal successor who changes anything in or omits anything from the work without the author's consent infringes the author's moral rights. The law must efficiently protect not only the work but also the intellectual and artistic interests laid down in it and the author's personal authority, conviction and reputation related to the work against other persons' intrusion.

The author's economic rights cover the exclusive enjoyment of the benefits and advantages expected to arise from his work. Solely the author is entitled to benefit financially from his work. Therefore, the author disposes over economic benefits that can be obtained from it and can determine the form and scope of benefiting. The forms of economic benefits can be various: for written works the most frequent from is reproduction and distribution through printing, however, reproduction by handwriting also occurs; exhibition (projection) by optical means or publication through reproduction by phone, on records, for speeches publication in printing or other ways. For theatre plays and musical works, publication of the text of the play/work through printing or in other way, public performance of the work. Distribution, that is, selling or disseminating the published work to the public as independent act also belongs to the author's economic rights. Quite expressively, Hungarian language sums up violation of all these rights set out in copyright in the word usurpation; furthermore, in all European laws it involves private law and criminal law consequences.

In jurisprudence the subject of copyright was the topic of theoretical disputes in the beginnings. The approach, however, which setting out from ownership considered the

external, physical body of the manifestation of the thought (manuscript or printed paper, painted canvas, carved object, sculptured material) the subject of law failed together with this theory. This approach, for that matter, did not cover public speeches and lectures.
The approach that the subject of copyright is bodiless, i.e., immaterial can be considered general in the theory. According to Josef Kohler's notion, which has not completely broken away from the physical approach to the subject of law, the subject of copyright is the imaginary picture, that is, its artificial creation *(Gebilde)* that the author has given to its work first in thought, then in external expression. That is what the law protects and not the content of the expressed thought. The content is often more important; yet, it is not this but the form of expression that copyright protects.[3] According to another approach, the thought, that is, the content of the work is the subject of law. This is clearly seen especially in plagiarism when the infringer makes other persons' expressed thought public in other treatment—where the distinctive feature of usurpation is the content itself, i.e., misappropriation of the thought. It was a recent approach that the subject of copyright is actually the shape, form in which the author's thought became embodied, that is, turned into a protectable work. New legislations set out from that and judicial practice moved within this scope of idea.
The further approach that the author's work is actually a right that belongs to the author's person and so the protection provided for it is ensured also to the author—i.e., it is a personal right in the strict sense—takes the personal aspects of the subject of law into account only and should be considered outdated. In accordance with the Hungarian Act LIV of 1921, the basis of copyright is constituted by the exclusive knowledge of the thought, the artistic shape in which the author recorded the thought or the technical procedure the author has invented to realise the thought. In general it can be established that the law protects thoughts appeared in a certain form only. However, the method itself *(manier)*, form of writing (style), literary, picture-writing, sculptural, architectural, decorative and photographing taste itself cannot be the subject of protection unless owing to the thought implied by or the structure of the work. Yet, expression of the thought by a new method, in a new style or taste can be deemed usurpation all the less because there is perhaps no such thing at all in literature and art as a totally new thought. Our every new thought is rooted in the past and is the result of slow development, growth, although it certainly carries the mark of individuality; so, accordingly, neither form, nor thought itself can be the subject of copyright. The two together, however, as an original composition, i.e., work can be.
Accordingly, the real subject of copyright is the planned composition in which the finished intellectual product, the work appears externally. Thus, basically, the subject of law is the intellectual fabric, i.e., plan of the work. This "intelligent" fabric, plan, that is, structure/organisation is the real subject of copyright. To the question what should be considered a work in terms of copyright no certain answer is given by various legislations and theories. In general, an irregularly, unsystematically expressed thought cannot be considered a work in terms of copyright yet.
Copyright is an exclusive but not unlimited right. Copyright can be exercised within restrictions set out in rule of law only, which restrictions mark the borders of the social function of copyright. All this is based on the social conditioning of author's works. To create a valuable intellectual product, author's work, first of all a creative person's individual skills, artistic, literary, scientific vein, outstanding achievement over the average are required; however, the impact of social environment cannot be underestimated in conceiving the work. It is enough to think of education, efforts to attain proper cultural level, setting up and operation of institution network that advances, ensures use of the works, creation of legal/organisational/financial conditions that serve authors' interests, development of a social

[3] Kohler 1907. 128.

climate to encourage creative work, appreciation of cultural heritage. Consequently, legal regulation needs to make efforts to guarantee not only the author's moral and economic interests but also to create opportunities for the possibly most extensive undisturbed social use of interesting works.

In social life the author's copyright powers are opposed to general cultural interests of significant weight. It is the author's interest to have legal dominion over his work excluding everybody, and that he alone should determine the economic conditions of publication too. It is, however, the interest of the individual and society itself that intellectual goods should spread as fast and as easily as possible. Between these two opposing interests the statutory protection of the author's rights arises from the consideration that a vivid intellectual product that meets the need of the public will be properly assured only in the event that the authors are also assured with respect to the expected economic benefits and personal advantages of their work. Accordingly, the practical question to be decided in science and lawmaking was as follows: in what aspects and to what extent can the author's exclusive legal dominion be restricted.

Legislative restrictions of copyright apply basically and primarily to economic rights the author is entitled to, which, of course, does not mean that moral rights are unrestricted. They are also governed by general legal principles and norms that set forth the obligation of exercise of rights according to rules and the prohibition of abuse of rights. Certain restraints of moral rights can be observed regarding service works, in the restriction of right of notice linked to revoking consent given to use; as a matter of fact, the author himself can use the means of self-limitation, for example under a contractual agreement. In the widest, at the same time simplifying sense, the term of protection can mean restriction of the author's economic rights although it is more proper to consider them the limits of protection.

In the state of development of the period, restrictions apply partly to the limits of copyright, partly to its duration. The former include especially liberation of works serving the benefits of education and general education, exclusion of charity performances in certain cases from the scope of the concept of usurpation and authorisation of quotations from alien authors' works, inclusion of short extracts from poems in music. To determine all these is a secondary task, which sometimes involved quite a lot of practical difficulties—for example in adapting a work to another genre or using a work for decorative purposes (applied arts).

Restrictions in time include term of limitation of right of action and even more the general limitation of copyright itself for the benefit of society, which could be perhaps called the extinction, amortisation of copyright. It is in it that the legal demand that society lays claim to the authors' works is manifested the most definitely, which was not clearly expressed in the period of the theory of intellectual property. Legislations usually set the term of amortisation in thirty/fifty years from the author's death, although the Berne Convention of 1886 tried to make it uniform. Certain statutes set shorter term of limitation, i.e., extinction on certain works (replicas of the fine arts, photos, plays, applied arts objects, etc.) as well as on translation of literary works—they made the latter subject to registration and terminated protection of translation of unregistered works in one or two years in order to boost circulation of thoughts and ensure greater legal security, which meant termination of the author's exclusive translation rights.

All these and restrictions similar to them belonged to the open questions of further development of copyright, just as eminent domain of the State regarding works considered prominently important in terms of general education—legislations preceding Act XVI of 1884 dispensed with eminent domain in terms of the author's moral rights.

The oldest form of infringement of copyright is *plagiarism (plagium)*, which was known by the Romans already, yet in a completely other sense.[4] Originally, plagiarism meant the act of making alien ideas appear one's own, so it fell within the scope of forgery and not theft. However, even new development in law has not made plagiarism a prosecutable infringement of rights, and as declaration of plagiarism could not be a task of copyright law, plagiarism in a stricter sense was not determined in the cases of infringement of copyright anywhere.[5]
According to the standpoint of the jurisprudence and legislation of the period infringement of all moral and economic rights provided for the author of the work was called usurpation, so the work itself, or its plan, i.e., structure, to be considered in this sense, was the subject of legal protection, and the author or his legal successor was the protected person (the latter only with respect to the rights devolved to them).
The cases of usurpation in author's, musical, theatre, fine arts and photographic works—presuming lack of the author's consent—could be the following infringements of rights:

- unauthorised publication of any copyrighted work not made public yet
- unauthorised reproduction of works made public already but not reproduced yet (public recitation, piece of music, exhibited picture, statue, photo)
- unauthorised publication of a work lawfully reproduced already but not made public yet, in spite of the author's will
- all cases of unauthorised distribution
- unauthorised public performance of plays and musical compositions
- unauthorised public exhibition or remaking of works of fine arts and photography
- unauthorised translation of author's work into another language
- unauthorised adaptation of a work in the same or to another genre
- unauthorised use of works of fine arts or photography for the purposes of applied arts or industrial manufacturing
- unauthorised use of author's works as words of music
- unauthorised changes, omissions, additions or corrections in/from/to the title or text of the work
- unauthorised use of the author's name on an alien work, or distortion of the author's name on the author's work, use of his real name instead of pseudonym or use of pseudonym instead of his real name, or use of another name instead of his name.

All these infringements of rights are partly of a personal nature, and sometimes of a mixed, moral and economic nature according to the author's right. It is beyond dispute that the author's moral rights will devolve on his legal successor (publisher) only in the event that he has expressly transferred them; however, neither in jurisprudence nor in legislation has a uniform view evolved as to what extent moral rights (use of name, correction of the work, right to make changes, etc.) devolve due to the author's death on his heirs, or to what extent on the person to whom the author transferred the economic utilisation of his work in his life (publisher).
According to the position held in the period, the legal consequence of usurpation was compensation for damage payable to the author; usually, the infringer's bad faith or negligence brought along complete compensation for damage (*damnum emergens* and *lucrum cessans*); in case of the infringer's excusable error or good faith refunding of unlawfully acquired benefit, i.e., enrichment was stipulated. In general, fine was acknowledged as penalty of usurpation, however, in copyright lawsuits the issue of penalty was more and more separated from the issue of compensation for damage, the latter was referred from the

[4] Cf. Martialis 1, 52.
[5] Kohler 1907. 65; 463.

jurisdiction of private law courts to the jurisdiction of criminal courts, as it was set forth by Austrian statutes in 1895 and German statutes in 1901 and 1907.

Publishing right is actually a partial transfer of rights, which the publisher obtains from the author for reproduction, publication, distribution of the work for certain consideration (honorarium), and as such it belongs in the strict sense to the scope of private law, and it contained all the rules of law that regulated the legal relation in the absence of any contract between the author and the publisher or in case such contract was incomplete. As a matter of fact, within the scope of the rights transferred to it, the publisher was entitled to take action against third parties, so if for example the publisher acquired the right to publish the work for a single edition, the publisher was entitled to copyright against not only a third party offender but against the author himself, except for the author's untransferred or untransferable rights. On the contrary, if the publisher acquired all of the author's rights on his work, then as the author's legal successor the publisher would exercise all of the author's rights, again except for those which can constitute solely the subject of *negotia inter vivos*.

Copyright regulation regulates economic and personal relations; today it still belongs to civil law in the broad sense. Nevertheless, as a consequence of its peculiarities and special function, in time it has turned into an independent, separated field of law both internationally and in our national legal system. Copyright protection is a legal relation that stipulates an obligation with absolute structure, negative content, which is in its character similar to ownership relations. Its subject, however, is the intellectual product that requires acknowledgement and protection of the author's moral rights too.

Author's economic rights are also granted the constitutional protection that in accordance with the Constitutional Court ruling No. 17/1992. (III. 30.) arises from the provisions of the Constitution on protection of ownership. This was declared already by Part III of the Constitutional Court ruling No. 1338/B/1992 with regard to inventor's rights; there is no reason at all to exclude author's economic rights from the constitutional protection already acknowledged for inventor's rights, where protection of such economic rights is the duty of the State.

On the other hand, the presumption seems to be well founded that on the grounds of paragraph (1) of Article 54 of the Constitution protection of the author's moral rights constitutes part of general personal rights and appears as a peculiar aspect of protection of human dignity. To support the above, it is possible to refer to the structural solution used in the Civil Code: the regulation of personal and intellectual property rights jointly in one chapter.

It also points towards fundamental rights classification of author's rights, or at least of the claim for copyright protection, that Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the United Nations (promulgated by Law-decree 9 of 1976) demands signatory countries to acknowledge the right everybody is entitled to that his/her moral and financial interest shall be protected with respect to any and all scientific, literary or artistic works s/he is the author of.

II. Turning points in the international history of the legal protection of intellectual property

II. 1. Copyright law in the national codification of the modern age

Although as early as in Roman law there were contracts that were entered into between the author and booksellers on multiplication of literary works and under which publisher's rights were protected by trader's business habits, these transactions were not provided with legal protection because legal sources do not mention the right of multiplying author's works and there were no action-at-law by which a possible claim could have been enforced.[6] The privileges provided by rulers or other superior authorities for merely certain individuals appeared as the first legal sources, which *"were granted to the author or the publisher, and in earlier times exclusively and usually to the publisher only"*.[7] As we can see action could be taken against reprints, impressions through privileges granted solely in individual cases: the point of these privileges was that the publisher—for example, subject to the prince's right of supervision—obtained right to printing and publishing of books under "monopoly". For lack of rule of law, it was determined in charters what works the privilege applied to, what the content of the legal relation between the publisher and the author was, and what its limitations in time were. Two great types of patents can be distinguished. One of them ensured printing of books in general for the person obtaining charter, and simultaneously barred everybody else from this activity; whereas the other type made it possible to print particular books, while excluding everybody else. In this respect, Hungary was not lagging behind considerably since, for example, in 1584 the College of Nagyszombat obtained the exclusive right of publishing *Corpus Iuris Hungarici*, being aware of the clause set out in the charter that impression and unauthorised sale by other persons shall be punished by ten golden marks.[8] In the Middle Ages, guild rules provided some collective protection with respect to product markings on the grounds of charters; from the 15th c. more and more privileges were issued, primarily in England, Switzerland and city-states of North Italy. This regulation aimed at the legal protection of the user, i.e., printer-publisher rather than that of the author, although privileges granted to the author can be also found in records.

Privileges were replaced by regulation at the level of law effective for the entire country rather slowly in Western Europe too. First, such a statute was adopted in England in 1709; the real wave of enacting laws started from the end of the 18th century only. Laws were usually determined by aspects of prevailing state and economy policy and definitely showed the traces of the system of privileges. After several Austrian decrees and Hungarian attempts at making laws in the late 18th c., the Hungarian national assembly passed a law on this subject in 1884 only.

The 1709 statute of Ann Stuart (1702–1714) and the judicial practice that evolved from it can be considered a scheme that broke through the feudal model and arrived at the concept of copyright law in the modern sense.[9] It can be established that codification with regard to intellectual properties reached consistent solutions that suited the capitalist economic system in countries where social/political transformation was also radical; so, in France and the United States of America, which can be considered the model of consistent bourgeois revolution.

During the 19th c. in Europe, codification of copyright and patent law in the modern sense evolved, consistently enforcing civil law approach and development of exclusive rights to

[6] Cf. Visky 1977. passim; Lendvai 2008. 57–79.
[7] Knorr 1890. V.
[8] Senkei-Kis 2007. 325.
[9] Lontai 1994. passim

intellectual property. The capitalist legal system consistently acknowledged the authors' rights, protection of works; this protection, however, as a result of the principle of formal equality before the law, continued to leave authors economically exposed to users in stronger economic position. In copyright law, guarantee rules protecting the weaker contracting party, i.e., the author, had developed only by the 60's and 70's in the 20th c.

The ancestor of every copyright law is the *Copyright Act* of 1709 of the Protestant Ann Stuart (*Statute of Ann*), which ended the monopoly of the *Stationers Company* and provided for exercise of censorship. It set forth that on the copies of a work published for the first time subject to entering it into proper register exclusive right would be created in favour of the author or the person to whom he transferred this right. After fourteen years had elapsed, the transferred right reverted to the author, who could transfer it to another person for fourteen years again. After a total of twenty-eight years had passed, the *copyright* terminated. When Bertalan Szemere started to prepare his bill, as we shall see, a regulation adopted in England in 1842 extended this protection merely to expiry of seven years following the author's death and to forty-two years (i.e., three times fourteen years) from the date the book was published.

The twice fourteen-year term of protection included in the pan-federal copyright law passed in 1790 in the United States of America following Ann Stuart's lead was raised in 1831 to twice twenty-eight years from the first edition, making renewal for the second period subject to compliance with determined scope of persons and new registration.[10] In the United States, as early as in the beginning of the 19th c. under pain of forfeiture of right, it was required that each reproduced copy should contain a *"copyright"* mark showing the year of the first edition; this made it possible to calculate the duration of the term of protection everybody was expected to meet and substituted publication in the official *Gazette* read by only a few people. It was not long ago that this generally known requirement terminated, more specifically after the accession of the US to the Berne Union in 1989.

In France, revolutionary decrees on theatre performances adopted in 1791 and on ownership rights of authors, composers, painters and draughtsmen in 1793 provided for the exclusive and transferable *"most sacred author's ownership"* for five and ten years following the author's death respectively, and it was the users and not the authors of relevant works who benefited from it. In 1810 the term of protection was extended to twenty years from the author's death.

On German territories, in the shadow of recipiated Roman law, authors' and publishers' rights were interpreted theoretically. In 1734, Böhmer asserted that by purchasing the manuscript its ownership would devolve to the publisher *"cum omni iure"*—including the right of publishing. In 1785, Kant stated that the author was entitled to inalienable and most personal right *(ius personalissimum)* on his work, and he could be addressed even in the form of publishing only with his permit.[11] In 1793, Fichte distinguished between the thoughts communicated in the work, casting these thoughts into an expounded work and the book embodying the work: the thoughts constitute public domain, the work is the author's inalienable property, and the publisher is entitled to rights on reproduced copies. The ownership concept was reinforced at the beginning of the 19th c. by Schopenhauer and Hegel. In his lectures published in 1820 Schopenhauer expounded that actual property is that can be taken away from a person only unlawfully, and the property that he can protect ultimately can be what he had worked on. Hegel made it clear that the person who obtains a copy of a work will be its unrestricted owner, however, the author of the writing will remain the owner of the right to reproduce the intellectual property.

Against the backdrop of such theoretical arguments and on the basis of increasingly prevailing natural law, the makers of the Prussian *Allgemeines Landrecht* of 1794 deemed it unnecessary to establish copyright; instead; they set out publisher's right in section 996 of the code,

[10] Senkei-Kis 2007. 326.

[11] Senkei-Kis 2007. 323.

stipulating that as a general rule a bookseller shall obtain publishing rights only on the grounds of written contract entered into with the author. Given this concept, the issue of protection did not even emerge. In Prussia, copyright law was created only on 11 June 1837: it was at that time when with the assistance of Savigny they made law on the protection of rights on scientific works and works of art against reprints and remaking. This law provided for protection of author's property for thirty years from the author's death.
In the same year, the *Deutscher Bund* quite modestly resolved that member states should acknowledge the author's right, at least for ten years, that a work published by a publisher indicated in it should not be reprinted without their permit. What we have here is mostly a rule of protecting publishers. In 1830, Russian legislation stipulated that the term of protection was twenty-five years. It is worth adding that when Szemere's proposal was completed, in 1844, Bavaria, for example, did not have a copyright law yet; it was made in 1865 only. However, at that time no copyright law was in force in Switzerland either where the Contract Law Act regulated publisher's transactions in 1881 only; a pan federal copyright law was made first in 1883. Even in Austria, the copyright patent entered into force only on 19 October 1846; since 1775, an imperial decree against reprints had been in force merely for the eternal provinces. So, the Austrian *Allgemeines Bürgerliches Gesetzbuch* of 1811 regulated copyright only *filius ante patrem*.
The third step was constituted by international agreements and treaties, once it had been realised that necessity of protection crosses borders. The signatories of such bilateral or multilateral international agreements developed their internal regulations so that they should comply with the content of the agreement as much as possible. Hungary entered into such an agreement first with the Austrians, in 1887, which provided for mutual protection of author's rights in literary and artistic works. Furthermore, in the 19th century, similar state agreements were entered into with Italy (1890), Great Britain (1893) and Germany (1899). From among multilateral international agreements the Berne Union Convention should be highlighted, which was entered into in 1886; however, Hungary became its member only in 1922—for that matter, this fact also contributed to making Act LIV of 1921, that is, the second copyright law.
Looking at these three forms, it should be seen that they move from the individual to the general. Privileges were issued by rulers, yet to single persons only, to print—usually one—book, simultaneously barring everybody else from this activity.[12] Subsequently, this could provide opportunity to enforce claims only against those who belonged to the jurisdiction of cities (city-states). Later on, laws focused on authors, and as part of that provided every author with protection of rights, and threatened everybody else, who committed abuse on the territory of the country, with penalty. International agreements determined frameworks of copyright protection in the most general terms, under which foreign works were also protected, however, actual substantive and procedural rules were contained always in national legislations. With respect to the subject of copyright protection, i.e., protected works, it can be stated that, albeit, in the beginning they prohibited reprints of writer's works, as technology developed protection of performances and works of art followed it at an increasingly fast speed.

II. 2. International copyright treaties

As international copyright laws applied to the territory of the issuing country only, they did not provide protection for foreign authors. Fundamental principles of mutuality between

[12] Senkei-Kis 2007. 324.

countries were set out first by the Berne Convention in 1886. Contrary to that, Emil Szalai writes that mutuality is not contained even at the level of reference in the text of the Convention.[13] The document clarified basic principles of copyright, and summed up the principles of settlement of disputed international issues; however, it left specification of details to the laws of the countries of the Union.[14] This basic document inspired several international requirements, agreements made later. Three types of these international agreements can be distinguished: universal, regional and bilateral agreements.

The highest level acknowledgement of copyright is set forth in Section 27 (2) of the United Nations General Assembly Declaration on Human Rights of 1948, which determines copyright as *"a fundamental right"*. This taciturn statement, however, is sufficient for this entitlement to be respected by practically all the states of the world. Universal agreements are more practical than that, and determine basic institutions of copyright usually as a framework rule. Agreements are mostly aimed at ensuring that the author should get at least basic level protection in each country from which specific ratifying countries can deviate maximum within the frameworks determined by the agreement. One of these basic rules is, for example, term of protection, which was determined as fifty years from the death of the right owner.

The first copyright meeting held a session in 1858 in Brussels; international regulation of copyright was discussed here for the first time. Chaired by Victor Hugo the *Association Littéraire Internationale* was founded in 1878 already, which provided framework for consultations of writers, artists and publishers in every second year until the First World War. From among them, the Rome meeting in 1882 is an outstanding event where on the proposal of Paul Schmidt (secretary general of *Börsenverein der deutschen Buchhändler*) an international meeting was convened to Berne to set up a copyright law union, and the Federal Council of Switzerland was requested to provide administration of the process. The meeting was held in September 1883; in the following year, the subject was discussed already at a diplomatic conference where Hungary represented itself officially—for the first and last time. After the 1885 conference, the year 1886 saw the founding of the Union: nine countries—England, Belgium, France, Germany, Spain, Switzerland, Sweden, Tunis and Haiti—signed the first Union document together with the supplementary article and final protocol of Berne, all of which entered into force on 5 December 1887. The Convention provided for further meetings too, of which it is necessary to mention the 1896 meeting in Paris ("additional document of Paris" and its supplementary statement) and the 1906 Berlin meeting, where codification of the right of the Union was formulated as a goal. As a result of that, "the modified Berne Convention for the Protection of Literary and Artistic Works" was created—this is the *corpus iuris* of the Union, together with the 20 March 1914 supplement. Hungary (together with fourteen countries) acceded both of them without reservations. Member states of the Union in 1922[15] were as follows: Austria, Belgium, Bulgaria, Czechoslovakia, Denmark (including the Faroe Islands), France (Algeria and colonies),[16] Greece, Haiti, Japan, Poland, Liberia, Luxembourg, Hungary, Morocco (except for the Spanish zone), Monaco, Great Britain (including its colonies and several protectorates), the Netherlands (including Dutch India, Dutch Antillas/Curacao and Suriname), Germany (including its protectorates), Norway, Italy, Spain (with its colonies), Portugal (with its colonies), Switzerland, Sweden and Tunis.[17]

Although the text of the Convention adopted in Berlin is authoritative, contrary to the principle of *lex posterior derogat legi priori*, member states may proceed against each other,

[13] Cf. Szalai 1922a 8. f.
[14] Szalai 1922a 15., 22.
[15] Szalai 1922a 30.
[16] Szalai 1922a 14.
[17] Szalai 1922a 14.

against countries outside the Union and newly accessing countries against the rest of the countries on the grounds of earlier provisions. It should be added that acceding countries are obliged to accept the Berlin modifications, while specifying parts of earlier documents intended to be applied.[18] Deviation from the Berlin Convention is allowed with respect to term of protection, protection of works of applied arts, etc.; consequently, the Union did not have a uniform legal source.

The Convention is divided into three parts: the organisation of the Union; substantive law of the Union (relation of the members of the Union to each other and cogent copyright rules within the frameworks of the Union); the administration of the Union. Its coercive force and system of sanctions, mutuality are not even mentioned in it. Based on that we can declare that the Convention is *lex imperfecta*, its application is based on solidarity, that is, each member state presumes that in the event that it complies with the provisions of the Convention, then the rest of the countries will also do so.

Hungary was obliged by Section 222 of Act XXXIII of 1922 (on ratifying the Trianon Peace Treaty) to accede to the Berne Union within twelve months, which had been *de facto* in progress since 1913. The relevant bill was made, but the outbreak of the First World War prevented the law from being enacted, what is more, the chaotic inland and international conditions after the world war made it definitely impossible to submit the bill to legislature. Eventually, the bill was submitted to the legislature in 1921, and was approved by the National Assembly on 23 December 1921, and it was sanctioned on 25 February 1922 (after Hungary acceded to the Union). Hungary announced accession to the government of the Swiss Confederation on 14 February 1922. In our country, the law providing for the above was published in the 4 February 1922 issue of the National Statute Book under the title Act XIII of 1922 ”on Accession of Hungary to the International Berne Union Founded for Protection of Literary and Artistic Works”.

The Berne Convention of 9 September 1886 for the Protection of Literary and Artistic Works set forth some fundamental principles (minimum standards of protection) that efficiently help universal protection of author’s works.[19] These fundamental principles are as follows: a) principle of national treatment under which a country extends the same protection to foreigners that it accords to its own authors; b) principle of automatic protection without any required formalities; c) principle of independent protection (a foreign artist will be provided with protection complying with domestic rules of law even if his work is not under protection in the country of origin). It sets forth the concept of work; definition of the copyright owner; the author’s minimum moral and economic rights. The Convention was originally signed by ten countries, today more than one hundred and fifty countries have adopted it. It has been revised on seven occasions: in Paris (1896), Berlin (1908), Berne (1914), Rome (1928), Brussels (1948), Stockholm (1967) and Paris (1971). Hungary acceded to the Berne Convention in 1922. Hungarian legislature included the text of the Convention revised on 24 July 1971 in Paris into Hungarian legal order by the law-decree 4 of 1975.

The Universal Copyright Convention signed on 6 September 1952 was made under the auspices of the UN; its necessity was justified by political reasons. Its essence is protection of copyright without any required formalities for foreigners. Promulgation of its text revised on 24 July 1971 in Paris in our country was provided by law-decree 3 of 1975.

The 1961 Rome Convention is for the protection of performers, producers of phonograms and broadcasting organisations. In Hungary it was implemented by Act XLIV of 1998. The Geneva Convention made on 29 October 1971—for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms—was promulgated in Hungary by law-decree 18 of 1975. The *Agreement on Trade Related Aspects of Intellectual*

[18] Szalai 1922a 29.

[19] Szalai 1922a 34. f.

Property Rights (TRIPS), constituting Annex "I. C" of the Marrakech Treaty, which set up the World Trade Organisation, promulgated by Act IX of 1998, provided for enforcement of rights based on reciprocity of form and the greatest allowance and for settlement of disputes between states.

They are differentiated from universal treaties by the number and geographical location of ratifying countries. The most important ones for Hungarian legislature are the Treaty of Rome founding the European Economic Community, and the directives affecting copyright adopted by the European Union recently. Directive 91/250/EEC on the legal protection of computer programs by copyright determines the concept of software, the right owners, their economic rights and special limitations of rights. Directive 92/100/EEC on rental right and lending right and on certain rights related to copyright in the field of intellectual property creates a "rental and lending right" as part of copyright protection, and sets out minimum standards of protection for the related rights of performers, phonogram, and film producers and broadcasting organisations. Directive 93/98/EEC harmonising the term of protection of copyright and certain related rights ensures that there is a single duration for copyright and related rights across the entire European Union, increases the duration of protection and provides for protection of works from the death of the author. Directive 96/9/EC on the legal protection of databases and their special limitations.

As part the European Union integration process, one of the tasks of Hungarian legislation is to develop proper legal environment for the Union law, paying special regard to Union directives. Based on that it can be declared that these directives are present as a quasi norm in Hungarian law, although they do not have direct effect; therefore, they bind the lawmaker but do not bind law enforcers.

In Article 65 of the Europe Agreement promulgated by Act I of 1994, Hungary assumes obligation to provide protection of an extent similar to the protection that prevails in the Community, within five years from signing the Agreement, which Hungary has completed, among others, by making the new copyright law. Regarding the European Union, it needs to be added that drafts, proposals and other preparatory documents, which constitute parts of the Union lawmaking process but have no binding force, represent important guidance for Hungarian legislation. They include, for example, the White Paper, whose annex deals with copyright protection; or the Green Paper published by the European Commission in June 1995 entitled "*Copyright and Related Rights in the Information Society"*. The most recent directive is the EU directive on copyright adopted by the European Parliament on 14 February 2001.

Although universal and regional agreements profoundly regulate copyright, the framework regulation is to be filled and specific procedural issues are to be regulated mostly by the legislature of specific states. So, bilateral agreements do not play a significant part, they have political or diplomatic significance; see, for example, the international agreement 26/1993 *(Agreement between the Government of the Republic of Hungary and the Government of the United States of America on intellectual property).* In harmony with its title, Article II of the Agreement extensively deals with protection of copyright and related rights, however, the greatest emphasis is given to protection of phonograms and computer programs, which obliges Hungary to implement legal harmonisation.

Operation, harmonisation and organisation frameworks of international conventions on copyright are provided primarily by the World Intellectual Property Organisation (WIPO) of the UN from 1970, in co-operation with the UNESCO. Its task is, in addition to administration, to advance creative intellectual activity and further transfer of technologies to underdeveloped countries. The World Trade Organisation as the entity to manage the TRIPS Agreements co-operates with WIPO in certain implementation issues.

III. Attempts at creating and reforming legal protection of intellectual property in Hungarian jurisprudence

Given the peculiarities of historical development, modern codification efforts evolved with a delay in the Age of Reforms in the eighteen-thirties; with respect to copyright the Bills related to Bertalan Szemere are worth mentioning. After suppression of the War of Independence (1849) and the Compromise (1867), basically Austrian laws were applied.

In the Central-Eastern European countries after the Second World War, intellectual property rights bore certain traces of central economic administration, foreign exchange management, income regulation and censorship. To different extent and for different reasons from country to country, this branch of law nevertheless preserved its main traditional features owing to, at last but not least, several decades' long membership in international agreements. The legal field of intellectual property shows continuous progress, without injuring essential principles. Just as in the phase of its evolution, in the appearance of modern development tendencies, economic circumstances and technological conditions constitute the key driving forces. General features of historical development are reflected by the progress made in this legal field in Hungary too.

Centuries long traditions of Hungarian copyright law, experience of domestic legal development cannot be ignored in working out the new regulation. Enforcement of international legal unification and European legal harmonisation requirements do not exclude respecting domestic copyright law traditions at all—they make it definitely necessary to integrate regulation harmonised with international conventions and European Community directives into Hungarian legal system and legal development organically; therefore, we must not put aside the assets of our copyright law in order to fulfil our legal harmonisation obligations. What Hungarian copyright law needs is reforms: renewal that maintains continuity of domestic regulation by exceeding former regulation while preserving the values achieved so far.

The history of Hungarian copyright law is characterised both by successful and unsuccessful attempts at codification, although aborted bills failed due to changes in historical circumstances rather than the standard of proposals.

The Bill submitted by Bertalan Szemere to the National Assembly in 1844 was not enacted for lack of royal sanctioning. Following the age of imperial patents and decrees, after the Compromise (1867) the Society of Hungarian Writers and Artists put forth—again an unsuccessful—motion for regulation; however, the Commercial Code, Act XXXVII of 1875 devoted a separate chapter to regulation of publishing transactions.

The first Hungarian copyright law, Act XVI of 1884, was made following László Arany's initiative, upon István Apáthy's motion. The Act implemented modern codification adjusted to bourgeois conditions, setting out from theoretical bases of intellectual property not superseded ever since.

Later re-codification of Hungarian copyright law was required by the need to create internal legal conditions of the accession to the Berne Union Convention. Act LIV of 1921 harmonised our copyright law with the current text of the Convention, and adjusted our regulation to the results of technological development.[20]

The last attempt at modernising bourgeois copyright law can be linked with the name of Elemér Balás P.; his Bill drafted in 1934 was published in 1947, however, due to political changes this Bill could not become an act.

The development of copyright law of the bourgeois epoch was dominated by the concept of intellectual property, qualifying copyright as proprietary (economic) right similar to property,

[20] Szalai 1922a 3. f.

which was in line with the requirements and needs of market economy and trade. Gradual acknowledgement of authors' moral rights also began; however, protection of these rights did not become the central element of copyright law approach either in theory or in practice. Paradoxically, as a special impact produced by the current ideology, this happened only during the period of plan economy and one-party system.

Our Copyright Act III of 1969—which is the third one following Act XVI of 1884 and Act LIV of 1921—was and has remained a noteworthy codification achievement in spite of the fact that it bore the traits of the age when it was made. Due to the economic policy trend prevailing in that period, there was no need to break away from fundamental principles and traditions of copyright; regulation did not distanced copyright eventually from its social and economic function. (Fortunately, it was only theory rather than regulation that was imbued with the dogmatic approach arising also from ideological deliberations that worked against enforcement of the authors' proprietary (economic) interests by overemphasising the elements of copyright related to personality (moral rights).) Perhaps, it was owing to this that Act III of 1969, albeit with several amendments, could for a long while keep up with international legal development and new achievements of technological progress just as with fundamentally changing political and economic circumstances.

Hungarian copyright law in the late 1970's and early 1980's was in the vanguard of world-wide and European legal development: as one of the first legal systems, our copyright law acknowledged protection of copyright to computer programs, provided for royalty to be paid on empty cassettes, settled copyright issues related to so-called cable television operations. Regulation of right to follow (subsequent right) and paying public domain was huge progress too.

After coming to a sudden standstill temporarily in the second half of the 1980's, new significant changes were brought by the period between 1993 and 1998. In terms of actions taken against violation of law, amendment to the Criminal Code in 1993 was of great significance, which qualified infringement of copyright and related rights a crime (see Section 329/A of the Criminal Code (Btk.) set forth by Section 72 of Act XVII of 1993). Act VII of 1994 on the Amendments to Certain Laws of Industrial Property and Copyright, in accordance with international and legal harmonisation requirements, provided for overall re-regulation of the protection of related rights of copyright—i.e. rights that performers, producers of phonograms and radio and television organisations were entitled to. Furthermore, the Act extended the duration of the protection of author's economic rights from fifty years to seventy years from the author's death, and the duration of protection of related rights from twenty to fifty years. In addition to that, the Act withdrew the rental and lending of computer programs, copies of motion picture works and phonogram works from the scope of free use; and, it required, in addition to the author's consent, the approval of the producer of phonograms and performers for rental and lending of marketed copies of phonograms. It was also an important progress that the 1994 Amendment to the Copyright Act terminated the statutory licence granted to radio and television for broadcasting works already made public in unchanged form and broadcasting public performances, and thereby modernised rules on broadcasting contracts. Act LXXII of 1994 implemented partial modification of the Act.

Following Constitutional Court resolution 14/1994. (II. 10.) AB, instead of a decree in a statute, it regulated the legal institutions of "right to follow" *(droit de suite)* and "paying public domain" *(domaine public payant)* important in terms of fine arts and applied arts. Act I of 1996 on Radio and Television Broadcasting also modified the Copyright Act; furthermore, it contains provisions important in terms of copyright. Govt. Decree Number 146/1996. (IX. 19.) as amended on collective copyright and related rights management provided for overall and modern regulation of collective management of copyright and related rights that cannot be exercised individually, and determined the transitory provisions related to termination and

legal succession of the Copyright Protection Office as central budgetary agency, aimed at maintaining continuity of law enforcement. Decree Number 5/1997. (II. 12.) MKM on rules of register of societies that perform collective copyright and related rights management was made to implement the Govt. Decree. Decree Number A 19/1996. (XII. 26.) MKM raised the maximum duration of publisher contracts to eight years. The amendments implemented by Act XI of 1997 on Protecting Trademarks and Geographical Product Markings and entered into force on 1 July 1997 affected legal consequences that may be applied due to infringement of copyright and measures that may be applied in lawsuits brought due to such violations of law. And, on the grounds of the authorisation granted in the new Trademark Act, Govt. Decree Number 128/1997. (VII. 24.) on measures that may be applied in customs administration proceedings against infringement of intellectual property rights was adopted. Accelerated legal development in recent years could become complete through overall re-regulation of copyright and related rights.
Act LXXVI of 1999 satisfies these demands, while it builds on recently achieved results. The Act is based on several years' preparatory work. The Minister of Justice set up an expert team in 1994 to work out the concept of the new regulation; furthermore, the Minister of Justice invited the World Intellectual Property Organisation (WIPO) of the UN to assist in preparing the new copyright act; also, on several occasions it was possible to have consultations with the experts of the European Commission. Taking the proposals of the expert team into account, by June 1997 the concept of the overall revision of our copyright law had been completed, which was approved by the Government by Govt. Resolution Number 1100/1997. (IX. 30.). In accordance with Section 4 of this Government Resolution, the Minister of Justice set up a codification committee to develop the new copyright regulation from the representatives of ministries and bodies with national powers concerned, courts, joint law administration organisations as well as interest representation organisations of right owners, users and other copyright experts. The draft Bill has been discussed by the Committee both in details and on the whole on several occasions; the content of the proposal reflects the consensus reached in the Committee in every respect.

III. 1. Ferenc Toldy and copyright

In the Age of Reforms members of Hungarian society met with several fields that had not been legally regulated until then. That is how placement of intellectual works in the legal system must have arisen as a fundamental problem because until the beginning of the Age of Reforms the "profession" of writers had not developed, there had been no periodicals, newspapers, and dramatic art and play-writing could not develop as an independent genre.
Two articles of Ferenc Toldy calls the attention to filling this gap in the law and reveal extraordinary expertise and rhetorical competence. His first article written on the topic was published in the columns of Athenaeum in 1838 entitled *"A few words on writer's property and petition to publishers of periodicals"*,[21] the other one in the Budapesti Szemle in 1840 under the title *"On writer's property"*.[22]
First, he defines the concept of property clearly as follows: *"Everything that we acquire by either our own internal talents or external tools without harm to alien rights is our unalienable true property, mortmain."* The definition contains every important element concerning the criteria of property. After that he translates the term of property to intellectual works and proves that once having obtained a form through printing it becomes property and

[21] Toldy 1838. 705–717.
[22] Toldy 1840. 157–237

unalienable property at that.[23] Furthermore he defines the term of *reprint/impression/*: *"misappropriation committed on true property"*.[24]

Once he has clarified fundamental terms, he expounds them in details: first of all, everybody can freely dispose over his property *(ius disponendi).* He can do it in the following forms according to Toldy: *"He may transfer his original right to other persons at his discretion, … he may disclaim the property … until he does not do that clearly or, knowing that, does not abandon it or does not let it lapse, nobody shall encroach upon his rights to this natural property"*.[25] Toldy expounds the process how a writer's thought becomes a thing. If he disposes of it by gift or sale, he always does it conditionally. He does not sell the work of intellect; instead, he lets some *unique thing, copy, instrument* on moral lease. By his work the author conveys ideas, information to the buyer, and the buyer processes them and integrates them in his store of knowledge. *"The author has not attached, cleverly could not have attached, has not put up for sale any other right to any copy of his work on sale: the buyer has not bought, could not have bought anything else so he does not have anything more than such intellectual utilisation"*.[26] This is a consensual contract that—in the absence of any stipulations to the contrary—cannot be attacked or doubted either morally or legally.

Toldy's reasons contain statements valid even today. Regulation of writer's property in an act is an indispensable task of the State because the writer and his intellectual work is public domain, which shapes the edification, intellectual and ethical moral of society. Society's task is to appreciate the writer and to ensure that the writer could spend all his time and power on creation, development of his own intellect: thereby he will produce works that serve the edification, progress of the whole country. If a writer does not see the reward of his talent and efforts or not even recovery of his financial expenses certified, he will leave this career, which makes society, science poorer. In his opinion it is a fundamental condition that each state should protect its own intellectual products and based on reciprocity should not authorise reprinting or sale of foreign literary works. (Several countries authorised or did not forbid reprinting of foreign works or sale of reprints:[27] France, Belgium, the United States of America, the states of the *Deutscher Bund* and Austria too—the latter was a hotbed of unrestricted reprinting both of foreign and the greatest German literary works: these printing houses were protected by the state too.) Toldy asserts that the really blissful situation would be if states did not authorise reprinting and they purchased original works from each other, and the rate of imports/exports would depend merely on *"which country provides its citizens with more instruments, support, which is indispensable and necessary in the world of science"*.[28]

Toldy claims that only one reason can be raised as an excuse, which somewhat explains advocacy for reprints: *"and that is expensiveness of original editions"*.[29] As a matter of fact, he does not accept this reason either, as he knows that these books are more expensive because publishers can cover their costs from sold copies only. In his opinion publishers could sell their books cheaper if they should not be afraid of reprinters, since more copies could be printed and sold with greater safety: the less a reprint costs and the more certain buyers win, the more lawful owners, publishers and writers lose. The writer because the publisher cannot pay for his efforts according to his merits and the publisher because its profit from the enterprise is dubious. Yet, it is not only the individual but also the state that incurs loss

[23] Toldy 1838. 705.
[24] Toldy 1838 706.
[25] Toldy 1838. 706.
[26] Toldy 1840. 160. § 4.
[27] Toldy 1838. 707.
[28] Toldy 1838. 708.
[29] Toldy 1838. 709.

because thereby in the long run scientific life, scientific development will be endangered and society will lag behind in development. Writer's work cannot be distinguished from other breadwinner activities, so it should be paid for. However, the issue of paying a fee is a rather complicated task. Toldy raises several possibilities.

On the one hand, it would be possible that the state should give salary to writers. This would not be a path to be followed because it could not be financed from the country's budget and it is problematic also because a standard to measure writers should be determined and only those who comply with this measure would be given salary. To avoid this, a reward of equal rate could be set, which is not a suitable method because there are huge differences between writers: *"And intellect cannot be measured by a man's arm."*[30] He raises the possibility that the state should make writer's property free *"by giving the right to writers to claim dividend from publishers on each printed or already sold copy. … But who will set this dividend? Who will check the number and sale of copies?"*[31] Questions, questions, questions, to which Toldy claims there is only one answer: when the state acknowledges writers' property right on their works, or to put it in other words, forbids reprinting. *"The public—vox populi—will reward its writers this way."*[32]

The solution could be only to make law. He considers the German act promulgated on 9 November 1835 an example to be followed in this subject, which obliged each province of the German Federation individually and mutually to acknowledge and protect both scientific and artistic property at least for ten years against reprinters as well as prohibited sale of reprints brought in from abroad and threatened with penalty. Penalty determined by the laws of provinces were imposed on reprinters and sellers of reprints, each copy and the instruments used for preparatory works were confiscated from them, and they were obliged to give full redress and compensation to the writer and the publisher. The Prussian government made an even stricter law covering all aspects, to consist of thirty-eight sections, which now regulated the issue of reciprocity and "*retaliation" concerning foreign states*.

Until then the issue of writer's property had not been put on the agenda of legislation in Hungary *"because there was no reason for worrying about it"* and *"if it has been injured, the injury has been overlooked or has not become subject of any complaint"*.[33]

Toldy, however, looks into the future with hope: he mentions Kazinczy's language reform efforts, publication of count István Széchenyi's book entitled *Credit*, foundation of the Hungarian Academy of Sciences and thereby the foundation of a new layer in civil society: the layer of writers. Literature came to life because now it had permanent audience, especially through the work of the press, and this participation, no matter how low its rate was compared to the five million population, did not give cause for dissatisfaction. Editors of periodicals were considered pioneers such as Károly Kisfaludy who paid honorarium on larger studies published in the columns of *Aurora* edited by him. József Bajza was the first who paid for all the studies published in his almanac, and in a predetermined system at that. Thereby intellectual work began to become goods and the idea of ownership involved in goods became reality.

III. 2. Early stages of statutory protection of author's works in Hungary

Regulation of copyright in Hungary was strongly linked to the Austrians. Its starting point was the *exclamation* by Ádám Takács addressed to lawmakers, in which the protestant

[30] Toldy 1840. 161. § 5.
[31] Toldy 1840. 162. § 5.
[32] Toldy 1840. 162. § 5.
[33] Toldy 1838. 711.

minister from Göny called the attention of the Governor's Council to the fact that *having defiled the work of printer Paczkó in Pest who published his funeral orations, printer Landerer reprinted the whole volume, … due to the loss caused by it Paczkó withdrew from publishing the second volume being afraid of Landerer stealing it again*.[34] To prevent continuation of this foul play, the minister turned to the Governor's Council as a result of which on 3 November 1793 the royal decree number 12157 was issued, which was the revised version of the decree dated 11 February 1775 in Austria. It sanctioned inland reprint by penalty and confiscation as well as compensation to be paid to the author. All this, however, did not apply to books published abroad and already reprinted inland by others, they could be freely published by anybody. It extended legal protection to the writer's legal successor *(cessionarius)* and formulated the institution of limitation well-known from later periods, which stated that after a certain period elapsed after the author's death the work became public domain and could be published freely by anybody but it did not set its detailed rules yet. In 1794 by another royal decree (no. 1812) it added reciprocity to it: it was prohibited in Hungary to reprint works printed in Austria, and the same protection was provided for works published on Hungarian territories against Austrian reprints. This rule was in force until the above mentioned Hungarian-Austrian international agreement (Act IX of 1887) was entered into.[35] Protection, however, proved to be underdeveloped because only the "preliminary path" formulating censorship existed instead of the judicial path. The scope of protected works was further widened by the court decree no. 4232 dated 22 April 1831, which extended protection to "drawings and copper engravings".

In the middle of the 19th century, however, literary, scientific and political life in our country flourished, strongly helped by reproduction. Simultaneously with progress, claims were received on abuses of copyright. The first highly significant writings on the topic can be linked to Ferencz Toldy, as it has been described above already.

The Kisfaludy Society seemed to be a committed adherent of lawmaking for a long time. They made their first attempt in 1844 when the board worked out a draft. This bill was forwarded to Bertalan Szemere to make it more accurate, who made the final version heavily under the influence of the 1837 Prussian copyright act and the 1843 Hungarian criminal law concept. On the one hand, he extended the scope of protection (in addition to author's works, theatre plays, musical works, drawings and paintings were defined); on the other hand, he defined the term of protection as a period of fifty years different from the average because thereby both the author and his legal successor could feel safer. Fine to be paid to the National Museum dominated (which could be converted to captivity in case of insolvency), however, reimbursement of the loss of the injured party was also carried out by obliging the injuring party to pay "compensation", considered private law sanction. It was his innovative and significant merit that he provided procedural law regulation too. The bill was progressive because contrary to the right of inheritance practice governing at the time the surviving spouse should obtain ownership rather than right of enjoyment on the work. In section 47 of his bill he set forth that *"at the same time the protection under this act shall be extended to insuring the rights of writers and artists of Transylvania until union with Transylvania is accomplished"*. In other words, foreseeing the union formulated (set) as a political aim he strove to extend copyright protection to eastern territories. He urged that all acts, customs and privileges contrary to the act in the making should be repealed, and he set the aim of regulating copyright in an act instead of unwritten law.

The ruler, however, threw back the bill giving the reasons that *"the principles set in the bill … should be modified for greater clarity and to fill certain gaps."*[36] Yet, the national assembly

[34] Kelemen 1869. 311; Balogh 1991. 151.
[35] Kenedi 1908. 9.
[36] Knorr 1980. XIII.

dissolved in the meantime did not have the opportunity to analyse the returned bill again. The ruler's real reason could be searched for in the fact that, given the intention to enact the Austrian copyright law vigorously being made, he did not want to break up the unity attained. The Austrian patent was published in 1846 and at the same time the king redebated Szemere's bill in order to create harmony with the patent. The next step was the Hungarian Royal Book Reviewer Office, which submitted its report to the king on 27 July 1847. Paying regard to all that Pál Jászay made his bill, which, however, was not debated due to accelerating political events, so the above mentioned decrees continued to be in force in our country.

During the revolution two significant statutes were made that highly affected the subject area, however, none of them was a direct copyright act. First, Act XVIII of 1848 should be mentioned, which covered the freedom of the press and as part of that abolished censorship. It stipulated that setting up a printing house was conditional upon compliance with Act XVI of 1840 on traders and depositing the mandatory four thousand forint security. Bookseller activity could be performed without any permits. Act XXX of 1848 provided for setting up theatres and ensured that theatre plays could be performed freely. The above mentioned 1846 patent, entitled *"Act to protect literary and artistic property against unauthorised publication, reprint and remaking"* was entered into force by the open order of 29 November 1852 in our country effective as from 1 May 1853.

These statutory provisions were in force in our country until 1861 (in Transylvania until 1884) when the National Judge's Conference implemented the program of gathering valid rules of civil law (that is how the collection of Temporary Judicial Rules was made), which served as source for all proceedings until governing statutory provisions were developed. According to these rules, intellectual works enjoyed the same legal protection as any other property, now not only books were protected but "creatures of the mind" too, that is, literary, artistic and musical works as well as translations. All this included the right of public performance and reproduction. At the same time, they declared that copyright was rooted in civil law and that the content of copyright would not extend beyond the author's death; at the same time, printing of books and reprint was no longer made subject to authority's licence.[37] Real practice, however, did not develop because these provisions were rather uncertain.

The year 1867 saw two new significant events in our country. First of all, owing to the international agreement entered into between Austria and France it was included in our act that performance of translation was attached to author's reservation of rights, and with respect to articles and communications published in periodicals both in regard to translation and reprint author's reservation of rights was a condition. Effective rules now included right of public performance, which was already regulated by the 1846 patent but—as it was referred to above—it was in force from 1853 to 1861. It must have been an outstandingly important tool of legal protection that as a new condition published and reproduced works were registered.

In the same year the Kisfaludy Society made its second bill, which was not debated even in 1869. It actually failed because the Hungarian criminal law concept was not completed yet, so there was nothing to compare the issue of penalties and procedure to. And the part on artists reworked by the Hungarian Society of the Fine Arts did not get any further than the desk of the Minister of Justice.

The Society of Hungarian Writers and Artists headed by Gyula Kováts, making use of the 1870 German imperial statute, made a new draft in 1874, which was submitted to the parliament as a bill—however, even if it paid regard to Hungarian needs, especially due to making the commercial code, it was not approved.

The Kisfaludy Society made a third attempt in 1876, this time in co-operation with the Hungarian Academy of Sciences: it entrusted László Arany to work out the draft. The draft

[37] Kelemen 1869. 315.

was first submitted to the Academy, then it was forwarded to the Minister of Justice, who convened a vocational conference to study it. The bill was submitted to the House of Representatives on 20 November 1882, which referred it to its judicial committee. The committee's report was made by 9 February 1883 already, yet the final text was attested by the House of Representatives only a year later, on 12 March 1884, and was approved by the Upper House in unchanged from. Finally, the ruler promulgated Act XVI on 7 May 1884.

III. 3. Bertalan Szemere's role in inland regulation of copyright—the 1844 Copyright Bill

Bertalan Szemere noticed the necessity of protection of property in copyright law. Owing to the technological revolution, works of authors and artists became unprotected, so it was reasonable to make a duly worked out act.

Szemere's modern approach to ownership superseded the approach prevailing in the age both on international and national level, which made legal regulation simpler in several respects. The legal scientist combined the jurist's thoughts on theory and practice in his works, which is expressed the best in one of his most significant works, his report and bill on providing literary and artistic rights drafted in 1844. [38]

He presented his bill on 23 September 1844, it was adopted with a few modifications. The bill was approved by the session of the members of the Upper House on 9 November 1844, however, the ruler did not sanction it as the court was already working on a copyright patent governing the whole empire, which entered into force also with respect to Hungary by the imperial decree dated 29 November 1852.[39] In determining the core of copyright Szemere surmounted the concept of ownership prevailing both home and abroad, which simplified legal regulation in several respects.[40]

It was the 1865 Bavarian act that used the term copyright *(Urheberrecht)* for the first time on German territories; five years later it was followed by the German federal copyright act. On French territories for the first time in 1886 the Belgian legislation used the phrase *"droit d' auteur"* instead of the term *propriété*. In Hungary Act XVI of 1884 reflected Szemere's approach already, with Gyula Kováts's significant contribution, who successfully proposed the concept of "*copyright"* as a general technical term.[41]

Szemere interpreted the author's rights on his works as the author's moral rights, which is clearly reflected by his sections proposed for asserting and exercising rights. According to his approach, rights regarding the work were regulated by law in a form inseparable from the author and the author could transfer uniform copyright only with respect to its exercise. This clearly shows how much his approach to copyright was ahead of his age for in Austria it was the 1895 Act that started to follow this interpretation.[42]

Protection of the author's right enjoys priority since the author retains his right even if he has transferred exercise of such right to the authorised publisher and he can assert it by lawsuit if the empowered publisher fails to do so.[43]

By harmonising the action of the author as original copyright owner and the exclusively authorised user of the work before court against a third party and by laying the legal grounds of author's contracts, he formulated thoughts again ahead of his age. An example for the latter

[38] Boytha 1994. 48; Senkei-Kis 2007. 328.
[39] Boytha 1994. 53.
[40] Boytha 1994. 53.
[41] Boytha 1994. 55.
[42] Boytha 1994. 55. f.
[43] Boytha 1994. 56.

is section 44 in Chapter VII entitled *"General provisions"*, which states that *"as the number of editions is not determined in the contract, […] only one edition shall be considered before the law. And as the number of copies is not determined, each edition is calculated to contain 1000 copies."*[44] It is important that the author does not transfer his own right, instead gives licence to publish, that is, such rights possessor may exercise the author's right only with respect to publishing and therefore it seems to be authorisation rather than transfer of property rights. [45]

Besides author's rights, Szemere separately discussed theatre plays, musical works as well as drawing and painting works, and regulated them in summary in an act. Following foreign example, he called editions without licence, referred to as *pirated edition*, *fake edition*, and would have imposed punitive sanctions. In the comparative analysis he finds that a fine is used for fake editions abroad too, which is converted to captivity in case of failure to make payment. [46]

Szemere's reasons also emphasises the importance of protection of author's rights stating that in Western Europe, more specifically France, being an author is a rank just as being a nobleman, a priest, a merchant. Szemere set legal regulation and social prestige of French literary life as an example to Hungarian legislation. He stressed that "civilised nations" already had laws to regulate copyright at the level of an act.

III. 3. 1. Copyright property in Szemere's bill

The question to be decided was whether *"the group of writer's, artistic rights is a property just as any other property?"* According to traditional approach maintained until then, legal relation of ownership has an absolute structure, the owner is entitled to means of legal protection against everybody. It is an important feature of the content of the right of ownership that its term is endless in theory, its subject can be alienated by the owner, and after his death it will devolve in accordance with rules of inheritance. Difficulty in the analysis of the content of author's rights is that its term is by no means endless; this righteously raises the importance of the dogmatic analysis of author's property rights. Some claim that it is a kind of *sui generis* property right, which *"has all the attributes of property, except for infinity of hereditariness"*.[47]

For a long time they maintained the approach that writer's and artistic property is basically identical with property in the general sense. So, in its first section the 1846 Austrian act stated that products of literature and works of art constitute property of their author. *Writer's and artistic property (literarisches und artistisches Eigentum)* was accepted for a long time in our country too. In Hungary, only in the bourgeois age did the judicial committee of the House of Representatives state the definition *"intellectual property"* replacing it by the term *"copyright"*.[48]

One of the most important issues of the subject area was the term of protection, which was determined as fifty years from the death of the author by Bertalan Szemere. It is clear that compared to the rest of countries of Europe this is a relatively long period. The draft of the Kisfaludy Society wanted to fix sixty years as the maximum of the term of protection, however, Szemere did not consider it expedient to set a period longer than fifty years, and deemed any period shorter than that definitely disadvantageous. His reasons can be summed in three points. Quite easily, given a short term, aliens outside the author's lawful descendants

[44] Boytha 1994. 56.
[45] Boytha 1994. 56.
[46] Boytha 1994. 56. f.
[47] Balogh 1991. 156.
[48] Balogh 1991. 157.

enjoy the benefits arising from a work appreciated by posterity only. It is well-known, he says, that it is just the most precious works that need the greatest ”investment” in time and energy, what is more, such masterpieces are produced quite often at the end of their writer’s life only. So, if the term of legal protection is short, this will urge authors to write works that can be written quickly rather than works developed over a long period of time. Obviously, there is a weightier interest to support the former works. Also, it is a living possibility that the work of an author is not published during his lifetime or it is not appreciated properly, however, subsequently it is appreciated. Szemere considered it important that writers and artists should be reassured that for a term of fifty years only their family, descendants could enjoy the fruits of their ancestor’s work.[49]

In succession of author’s rights, general rules of law of inheritance/succession and contract law prevail; so, the writer can transfer the rights he is entitled to (that is, publishing) under either free or onerous transactions. During the fifty-year term the legal successor can also exercise rights, however, only with respect to publishing, that is, he is not entitled to the right of change. Szemere’s bill raises the issue of the right of surviving spouse upon the author’s death. If the writer has not made a last will and testament, then author’s rights will devolve to the lawful inheritors.[50]

The surviving spouse was entitled to rights provided under widow’s right *(ius viduale)*, of which inheritance in real assets was considered exceptional, and was basically restricted to certain movables. According to the main rule, the surviving spouse was given usufruct on the goods only. A special version of legal succession is also discussed where term of protection was provided for those who—not being a relative or testamentary inheritor—got into the possession of the manuscript after the author’s death and published it.

And if the manuscript is found after fifty years from the author’s death only, the lawful possessor will be entitled to the right to publish for thirty years from the first edition of the work. So, Szemere set fifty years as the maximum term of legal protection. He promised much shorter, thirty years protection to authors who made Hungarian literary remains of the language, historical sources, charters and collections of folk legends, tales, sagas, songs and proverbs public domain.[51]

When the work was first published, a reservation of rights statement had to be made with regard to translation into foreign languages; this is one of the significant elements of copyright. If such statement was not made, then the right of translation became *public domain*; just as when the author did not publish his work in some language *”living in the country”* in three years from publication. So, the right of translation into German, Romanian, Slovakian etc. was available to the author for three years only; if he did not exercise it during this period, he definitely lost the opportunity to exercise it.

In publishing periodicals and volumes of studies, the publisher was entitled to writer’s rights, however, a contract to the contrary could be entered into with the publisher; furthermore, the author could have his articles published in an independent collection after two years from publication. In this case it was the author’s rights that were primarily protected. Rights related to works produced as a result of co-operation of several authors were provided for the authors’ groups; calculation of the deadline started from the last volume for dictionaries and from publication of each volume for collections and yearbooks; according to the comments the term of protection was thirty years too.[52]

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[49] Balogh 1991. 157. f.
[50] Balogh 1991. 158. f.
[51] Balogh 1991. 159.
[52] Balogh 1991. 159.

Double fee was not unusual since authors were entitled to general writer's rights in addition to stage rights.[53] This might be in the background of the regulation of musical works too.[54] Composers and their legal successors were given all the rights to publish and use their works that were granted to writers, and compositions that were performed in theatres and in concerts enjoyed rights on theatre plays too.[55]

"Drawing and painting works" were also regulated in the act. However, it was difficult to determine their concept; Szemere listed the most frequent versions as examples; *"all works that can be produced permanently by lines and colours"* enjoyed legal protection. Artists of the fine arts (and their legal successors) had rights set out in the first chapter. Assignment of the right to reproduce, as a matter of fact, did not mean that the original work was no longer owned by the artist, he could waive that solely by express statement.[56]

III. 3. 2. The concept and sanctioning of violation of writer's rights in Szemere's approach

Szemere discussed violation of rights related to author's rights and their legal remedy in details. He carried out in-depth analysis regarding fake editions too. As a matter of fact, not only the publisher but also the author might have commited violation of rights, for that matter, against the publisher if he had his work published by another publisher too before expiry of the period set out in the contract they had entered into on that work. On the other hand, the publisher acted contrary to law if he printed and published more copies than set out in the contract. This latter version most probably occurred only when printed works produced in extra numbers were not sold or were bought by buyers but the publisher did not share the profit from sale over the stipulated number of copies with the author. Furthermore, it was considered fake edition when works printed abroad were marketed inland if the author was a resident in the country.[57]

Without the copyright owner's being aware and having given his consent thereto it was forbidden to make and publish any kind of extract, abridged edition or revision/adaptation that basically contained the content of the original. This bill, furthermore, considered it fake edition when introductions, explanations, notes were written to a work already in public ownership without the author's or his legal successors' permit. If it was possible, the author's (legal successor's) consent had to be obtained. Addresses, lectures held by teachers on pulpits could be published with the lecturer's permit only. Szemere cared for writings published in periodicals and newspapers; any writing concerning them could be published solely with the source specified. His bill claimed that it was fake edition when an author, in order to deceive his readers, gave a title to his work that belonged to another work already in circulation.[58] He dwelt on *quasi* fake editions too. These conducts were similar to those described above; yet, they were not considered fake editions. Accordingly, anybody was allowed to publish rules of law: no pecuniary loss was suffered thereby by anybody, on the contrary, it was in everybody's interest to make rules of law extensively known. With similar freedom it was possible to publish speeches delivered at public sessions of the parliament, municipalities and any association, with the essential restriction that the collected edition of the speeches of one person enjoyed legal protection. Also, it was possible to quote from anything freely but only

[53] Balogh 1991. 160.
[54] Balogh 1991. 160.
[55] Balogh 1991. 160.
[56] Balogh 1991. 160.
[57] Balogh 1991. 161.
[58] Balogh 1991. 161.

word for word. Also, it was possible to adopt papers, essays, poems and oral works with full liberty in works serving educational purposes.[59]
Sanction took the form of compensation of pecuniary loss. The party causing damage was obliged to pay fine up to six hundred forints to the National Museum, however, as appropriate he had to compensate for the total damage the injured party had suffered. Instigators and abettors were responsible for their acts in proportion to liability. Parties privy to the act had joint and several liability. At that time the six hundred forint fine seemed to be moderate since in France, for example, penalty was two thousand (for habitual offenders four thousand) Francs and up to one-year imprisonment, while in England one hundred pounds and double the amount of the price of all the printed copies had to be reimbursed.[60]
When it was possible to determine the number of sold copies of the fake edition, the price of the original copy had to be paid to the lawful possessor for each copy, and when it was not possible to determine the number of printed or sold copies, or misdemeanour was committed to the injury of a work not even published yet, on the first occasion at least half of the number of original copies, on the second occasion the *"usual price"* of similar works served as measure for assessing the damage in court. The author had the right to decide whether he took over or destructed the fake copies confiscated and the metal and stone slabs and wood boards etc. necessary for producing them. In the former case the amount up to the rate of his enrichment was deducted from the amount of compensation. In the case of authors of theatre plays and musical works, whenever the play, musical piece in question was performed unlawfully, the total proceeds were every time confiscated (without deductions!), irrespective whether the work was performed individually or together with other pieces. If it was not possible to determine the proceeds subsequently, the closest proceeds at the time governed in determining the amount of compensation.
Habitual offence was severely sanctioned; basic penalty was maximum six hundred forints, and could be up to the double of the aggregate amount of compensation. The perpetrator, if he was unable to pay, could discharge penalty in the form of imprisonment. One day captivity was equal to five forints. However, it was not at the offender's discretion; penalty could be commuted to imprisonment only in the event that a) the offender had not reached legal age (men younger than twenty-four) and not having any property his parents did not intend to discharge, b) attachment on the property of the condemned had been promulgated due to bankruptcy or dissipation of funds, c) if the fine had not been produced from the obligor's property.[61]

III. 3. 4. Procedural rules of copyright disputes in Szemere's bill

In chapter six Szemere writes in details on procedural rules of disputes. Szemere anticipated that Hungarian judicature would face a quite new phenomenon of substantive law, whose procedural rules could not be integrated without difficulties into the pattern of any of the former action types.[62] That is the reason for the detailed an extended regulation, which skilfully avoids dangers of casuistry. *"Punitive claim"* could be submitted by the injured party only. The name 'claim' is misleading because the issue here is not that violation of author's rights was considered criminal law *delictum*; even the special part of the penal code bill debated in the 1843/44 national assembly did not contain such state of facts, so the attribute "punitive" should be interpreted quite generally. Here, the injured party means not only the author or his legal successor but the publisher too. So, it was primarily the publisher

[59] Balogh 1991. 162.
[60] Balogh 1991. 162.
[61] Balogh 1991. 163.
[62] Balogh 1991. 163.

that was entitled to the right to bring action against violation of rights in connection with a work published, except when the author's rights were impaired by the publisher printing and publishing a number of copies higher than agreed upon in the contract entered into with the author. If, however, the publisher failed to do so during thirty days from the written notice made by the author or his legal successor, the right to submit the statement of claim would devolve to the author (legal successor). If the act violated rights related to unpublished manuscripts, the action could be instituted solely by the author.[63]

During the proceedings the parties could make an arrangement as well, however, such arrangement could cover compensation only and not the fine to be awarded for the benefit of the state (more specifically the National Museum). So, impairment of the author's rights must have injured both private interest and public interest.[64]

Furthermore, the bill orders that one bound copy of the published work *"shall be placed and registered"* in the proper office of the *"Hungarian academy"*, and the author should get a receipt thereon, whose attested copy should be attached to the statement of claim. For theatre plays and musical works in manuscript, it was sufficient to register the title and the name of the author or the rights possessor and the date and place of the first performance. The copyright owner could exercise his right to institute action during two years from committing the injury.[65] Term of preclusion was two years from occurrence of the objective fact of the injury. The action could be brought without paying regard to feudal legal status. The action could be brought before the authority of the place of injury, i.e., before the deputy sheriff in the county and before the captain in privileged districts and free royal cities. Summons were issued within eight days from receipt of the statement of claim, appearance could not be shorter than fifteen days and longer than forty-five days depending on the distance of the domicile of the sued party.[66]

The lawsuit was conducted in writing and both parties could make two oral pleadings, the plaintiff's statement of claim was considered one of them. The defendant had maximum five days for giving response, which could be extended on one occasion based on justified application but could not be longer than fifteen days. After the oral pleadings the parties' acts in the action were completed, which was followed by adopting the court decision and passing judgment.[67]

Within twenty-four hours following completion of the demonstration the court had to address all the documents of the case to the seat of experts. By then, involvement of experts had been a generally accepted practice in the western world. The Saxon code (1844) did not, the Prussian code (1837) did oblige the judge to accept the expert's opinion.[68] Mostly, the court requested the seat of experts to issue their opinion at its discretion, and deemed it mandatory to request it if it believed that its own expertise was not sufficient to decide the legal dispute on the merits in a just manner. On the contrary, Szemere prescribed that it was mandatory for the court to address the documents to the seat of experts. It was not surprising that the court was not allowed to deviate from the statement issued by the experts on the injury, the court's power was restricted to assessment of the extent of legal sanction. The seat of experts was obliged to make a statement on the subject of injury every time, however, only upon the court's call on the amount of indemnity. The experts had fifteen days from receipt to adopt the expert's decision.[69]

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[63] Balogh 1991. 163.
[64] Balogh 1991. 163. f.
[65] Balogh 1991. 164.
[66] Balogh 1991. 164.
[67] Balogh 1991. 164.
[68] Balogh 1991. 164.
[69] Balogh 1991. 164. f.

The court, in possession of the written pleadings and expert's opinion, passed its judgment (the bill did not set the period available to the court), which could be contested by appeal within three days from delivery. The bill specified the Royal Court of Appeal as the court of the second instance, and no further legal remedy lay. Consequently, the bill radically simplified the feudal judicial process by declaring the judgment of the court of the second instance final and unappealable in advance.[70] He proposed that the eleven members of the seat of experts were to be elected by the general meeting of the Hungarian Academy of Sciences annually. They had to consist of four members of the Academy, three writers and artists outside the Academy, two librarians and two sellers of pictures and musical pieces.[71] The body of experts was to take an oath before the general meeting of the Academy, and the body itself was to elect its chairman for a year. It was to adopt its resolutions by simple majority of the votes cast but at least presence of five members was necessary to constitute quorum, and two of them had to be experts, and if the issue concerned music or the arts, they had to be sellers of pictures or music.[72]

[70] Balogh 1991. 165.
[71] Balogh 1991. 165.
[72] Balogh 1991. 165.

IV. The 1906 debate of the Hungarian Lawyers' Society on the copyright act

VI. 1. Miksa Márton's speech

Miksa Márton, a member of stage authors' association, in the part of his speech on the merits called the attention to the faults of the copyright act. He did not dwell on the sections of the act one by one, instead he pointed out the general faults of the copyright act he had been convinced of in practice.

In his view, since the 1884 copyright act entered into force several factors whose conditions the copyright act regulated had changed to a great extent, with special regard to the conditions of the stage and writers of the age. In his speech Miksa Márton did not intend to give a political opinion or go into arguments, he called the attention of the persons present to the following: *"… Hungarian writers are not just priests offering things on the altar of culture: Hungarian writers by their pen, orators by their word, painters by their brush are soldiers, whose words, writing are their weapon: weapon that unites, that disseminates the Hungarian nation that conquers the country for the Hungarian element and ensures continued existence of Hungarians."*[73] He called the attention to the point that the literary scene did play an important role in the life of the nation, fulfilled an outstanding task in maintaining the Hungarian mind and anyone who respected literature could be pleased to see that our literature was able, in spite of all external pressure, impact, to retain *"its own racial Hungarian nature, special Hungarian colour"*.[74] He set requirements that the copyright act was to meet and he wanted to attain through the reform first and foremost. One of his requirements was that the act should protect property rights more radically than other legislation.

He points out that the commercial code regulates only the business character of publisher's transactions, and takes into consideration the content of only legal transactions that the author enters into with his publisher, and pays no regard to the content of the author's rights. He mentions as an example that German legislation lists item by item the author's rights that he may exercise against the publisher: they include the right of translation and adaptation (the latter can play a significant role for musical works), after that he gives a detailed analysis of the copyright act.

He mentions that the copyright act is not radical enough: section 1 of the act contains the general provisions, which is the main item of the act—it stipulates provisions regarding reproduction, publication and marketing of writer's, author's works, however, in his view this provision does not contain all essential elements. In Miksa Márton's opinion even section one provides provisions within a rather narrow scope, and later on he dwells on them in details. Next he criticises section 6: as if here the rule of law wanted to make up for the deficiencies of section one, i.e., the problem that it defined the term of copyright not in accordance with requirements; it lists the cases of infringement of copyright. As if the definition of who is that violates copyright appeared as a counterbalance from which we might deduce what copyright actually is. By that, however, the act raises another problem: in court proceedings both section 1 and section 6 shall be taken into account, and the judge is bound by both. As it lists usurpation in seven points, which can be considered itemised, a case might arise where none of the opportunities can be used because it is not included in the listed items, however, copyright has been nevertheless violated, and the court cannot declare the case of usurpation regarding copyright, thus, the act does not achieve its goal, does not sufficiently protect the author and his right. The lecturer argues as follows: *"When the act, whose prime requisite is precision, clarity, leaves such gaps with respect to its very first, primary definitions, then it is*

[73] Szladits 1906. 5.
[74] Szladits 1906. 5.

clear that this will result in uncertainty, instability in judicature…".[75] The thoughts described above formulate the opportunity that the judge handles the above-mentioned sections extensively for the sake of easier applicability, in this case, however, faith in administration of justice can be easily shaken. Miksa Márton refers to the provisions of both the Austrian and German copyright act. In his opinion, the German act regulates this field of law quite precisely, and believes that the Germans have a perfectly worked out copyright law in spite of the conservative elements in it. The Austrian act can serve as an example too; its advantage is that in terms of territory it is closer to us, so it can be easier identified with our own provisions. On the contrary, he makes critical remarks concerning the French law and does not refer to it, arguing that in France the relevant law is outdated, and at the turn of the century they apply mostly the results of administration of justice and not itemised provisions. The Austrian act gives the definition of the infringement of copyright briefly and concisely: *"adaptation of the author's work without the author's licence shall be considered infringement of copyright"*.[76]So, the deficiency of domestic act is that if somebody can freely dispose over his own work, then why should he not dispose over its adaptation, use too? In judicial practice this raises further problems because for lack of legal regulation only files accumulate in cases concerning this issue. It occurs quite often that a drama has been made from a short story, narrative, so it is a typical case where adaptation is implemented. In this case the law in force at the time does not contain any provision that provides protection for the authors against adaptation. As the next example the speaker raises the issue of writer's letters that were published formerly in a collected edition, which was quite a popular genre; the act, however, does not even mention them, so does not regulate this subject area, while the German act resolutely provides for this too.

The next serious problem comes from lack of regulation of extracts, in other words, what may be borrowed from the work and what not. Section 9 of the act states that *"quoting certain loci or minor parts of a work already published shall not be considered infringement of copyright"*, then in continuation *"inclusion of published minor papers in a restricted volume justified by the goal in a greater work that is independent in its content can be considered a scientific work"*.[77] In this part the act discusses what right the author is deprived of, here we expect to see a correct, precise definition, however, we find an obscure, unclear statutory definition only. Presumably, what gives reason for regular abuses of copyright is that the act does not provide proper legal security, moral and ethical value, so anybody can act freely with works in this field due to gaps in the law because there is no applicable retaliation against it or proper penalty. It follows from the above that authors do not trust the copyright act, contrary to criminal rules of law since the provisions set forth in them are clearer and more easily understandable and therefore can be enforced, so they guarantee legal security much better.

Márton asserts that in terms of its structure the copyright act cannot be considered good either because it is incomprehensible; also, it occurs that it mixes questions or settles them in parts where they cannot be classified into taxonomically. The speaker calls the attention to the second sentence of section 1 of the act, which is quite contrary to section 7 of the Austrian copyright act; it is clear evidence of this poorly built structure (*"regarding works which cannot be separated into several parts intellectualy, only jointly are the authors entitled to right of disposal"*[78]) Meaning that concerning substantive issues we can speak about divisibility, which can be as well proportionate, yet, the right of disposal is indivisible.

In what follows, the speaker disputes provisions regarding translation, which again would need amendments. Translation constitutes the most fundamental element of copyright, so it

[75] Szladits 1906. 8.
[76] Szladits 1906. 8.
[77] Szladits 1906. 10.
[78] Szladits 1906. 11.

deserves to be dealt with in more details, just as Miksa Márton did. As it has become clear earlier, if the author disposes over publication, marketing of the work, distribution and related deadlines and forms, then the author should dispose over translation too since this is one of the forms of distribution. Consequently, it is a significant issue who translates the work into another language, which is one the author's prime interests too. It is possible to raise the general problem against the act that the author can dispose over translation only in the event that the author has reserved his right to it. The provision of the act in section 7, which cannot be considered exact again, is as follows: *"…translation of the original work without the author's consent can be considered infringement of copyright if the author has reserved the right of translation on the title page of the original work, on condition that translation has been commenced during one year and completed during three years from publication of the original work"*. The above quotation from the act can be perhaps taken as one of the best examples of obscure and incomprehensible formulation. More specifically, it does not reveal regarding whom it stipulates deadlines and what the date of commencement and date of termination of such deadline is. Miksa Márton raised another problem concerning section 7: *"for theatre plays translation shall be fully completed during six months from publication of the original work"*. His question to this is "*who is to complete it and from when six months is calculated from?"*[79] Although he himself gives answer to the second part of his question based on his own experience: it is calculated from the date of the first performance, the answer comes soon from the audience: it is the entitled translator who must complete it.

His next argument concerns sections 46 and 48, to be more precise, he considers these injurious. Section 46 of the act provides for infringement of copyright regarding musical works: *"any adaptation published without the author's consent that cannot be considered own composition"*. Again, he confronts this section with section 32 of the Austrian act, which defines the cases where adaptation of a musical work implements violation of rights, and where it allows the adapter the following: *"certain variations, fantasies may be, others may not be made from certain musical works"*.[80] After the above-mentioned section, he touches on section 48, deemed more injurious by him. Use of a published author's work as the text of a musical work cannot be considered infringement of copyright, and it follows from the above that poets' works can be freely used. Commenting upon this part of the act Márton expounds that this is contrary to the author's most fundamental right since only the author shall dispose over the poem or text. This opportunity of use is contrary to equity because the composer uses the work and obtains income therefrom, while the author of the original work gets no consideration for it although the composer would not have any income without him. Márton raises the following example in this respect: *"…'A falu rossza' ['Scoundrel of the Village'] was written as a folk play and composer Jenő Hubay made an opera of it. Mrs Ede Tót sued Jenő Hubay for unauthorised use and infringement of copyright. The curia [the Supreme Court] passed judgment in accordance with section 48 that texts that owing to their nature have significance only with respect to music composition such as texts of operas, oratorios shall be taken out of the term of usurpation."*[81]

According to Márton the act does not consider protection of dramatic works important enough, which is clear from section 50 too, which states that outside stage overtures, parts of music between the acts and other parts can be performed without the copyright owner's consent, however, authors lose their source of income due to this section. The Austrian act stipulates contrary provisions because consideration shall be paid for using the author's music. Miksa Márton finds section 51 injurious too, which states that musical works published in reproduced form and offered for sale can be performed without the copyright

[79] Szladits 1906. 13.
[80] Szladits 1906. 14.
[81] Szladits 1906. 14.

owner's consent provided that the author has not reserved the right of performance on the title page or at the beginning of the work. This inflicts the author more than the section on translation because public performance of a stage work is the author's most fundamental right. He refers to the fact that German regulation is also liberal but in certain cases only: in charity parties where admission is free and contributors perform free of charge; Hungarian regulation, however, makes copyright a prey without any restrictions, and binds enforcement of copyright to a formality whereas the author cannot be demanded to reserve assertion of a formal right separately.

According to section 52, if there are several authors of the work, paragraphs two and three of section 1 shall be applied with respect to public performance with the deviation that performance of musical works with words, including musical plays, need the composer's consent only in general. The speaker claims it is hard to understand why the composer's work is judged differently than the librettist' work, and why greater right of disposal is given to him.

Section 58 of the copyright act applies to performance of theatre plays; it sates that in case of violation of rights *"the total income from unauthorised performance without deduction of the costs incurred shall be paid as indemnity"*. This is contrary to the generally accepted practice of the period because the injured could get a certain part only. If this section of the act stood indeed, then each author would watch when rules are infringed, would look for conflict so tht the total income received could be delivered to him as indemnity. Probably some kind of error is hiding here, he says, since in Hungary the basis of compensation can be only the part of the total income which serves to determine the author's royalty.

The copyright act does not provide for several issues, however, development makes it unavoidable to make rules with regard to mechanical reproduction, publication and marketing: lawmakers cannot forget that development brings along more modern, more state-of-the-art technologies that raise problems in law. There is no correct statutory definition for the above-mentioned mechanical reproduction, publication and marketing; the German act, on the contrary, foreseeing technological development, exhaustively describes what the phrase *mechanical reproduction* covers. It is a particular question whether the phonograph is a machine or not, and if copyright can be infringed by reproducing the author's work through a phonograph. According to German regulation, infringement of right cannot be committed through a phonograph, the French act, however, regulates these issues stricter because phonograph is deemed a means suitable for that.

From among the rules to be reformed arising in connection with limitation he highlights section 36 which states that penalty of infringement of copyright and claim for compensation and unlawful enrichment will lapse in three years, and the three years will start on the day when distribution of unlawfully reproduced copies commences or publication of the work takes place. Márton considers this inequitable, the three years little and determination of the commencement of limitation unreasonable. If, for example, the author goes abroad for a longer period, during this time somebody might publish his work and if the author returns home and learns of what has happened only four years later, then he cannot take action against the infringer as the term of assertion of rights has already expired because distribution started more than three years before. It would be a more equitable solution if the term of limitation was calculated not from commencement of distribution but from the date of learning of the facts since this rule protects the author's interests, therefore, it should be adjusted to his information, knowledge of the facts.

Furthermore, he contests the procedural law part of the act, again based on his experience: he does not deem it equitable that the term of passing judgment in copyright related claims is longer than one year. In Márton' practice it had never occurred that the court passed judgment within one year in copyright claims: *"…I do not speak about compensation for damage,*

which could be left with the competent court according to the extent of the amount, however, the fact of infringement of copyright should be reserved for court of justice and minutes proceedings against the flagrant offender, which as we know takes painfully such a long time".[82]

Also, he points out how big uncertainty is concerning copyright in our country and refers to relations maintained with foreign countries. He finds it injurious that the country "dropped out of" the Berne Convention, and that we do not maintain good relations with several foreign states, which has produced a "really robbing practice". He emphasises that the Authors' Association makes every effort to act within its sphere of authority and, for example, in consultation with the US consul in Budapest it tries to create reciprocity between the two countries.

IV. 2. Géza Kenedi's speech

In Géza Kenedi's view it is a generally unfortunate feature of Hungarian lawmaking that all of our acts were enacted when they were already considered outdated in the country where they came from (often, other branches of law in Hungary lag behind too). He considers our copyright act reception of the 1870 German copyright act, however, it was considered outdated in Germany by 1884. *"I have wanted to grasp this old statute to criticise it and search for great motifs of the act and it always slips out of my hands. I can always find, as the honourable speaker detailed it quite well, fragmentary measures, which are bad, have no sense in parts or when they have sense they should rather not have that sense"*[83], Géza Kenedi begins his speech on the merits. He shares the opinion of the previous speaker regarding reform, so the question is not if reform is needed, since it is obviously clear from the present situation, but in which direction it should go. Géza Kenedi's opinion is different in several points from Miksa Márton's views, who took the floor before him. *"Actully, advanced education has not produced many new instruments with respect to expressing thoughts and—as music is also concerned here—emotions since the date of this act."* Apart from the telephone and phonograph, it was motion picture that has appeared as a new instrument, so the regulation of only these instruments should be integrated in the act, which the Germans have partly done as their act was made in 1901.

In what follows he refers to some examples in his speech. The first ones include the case of the Telephone Herald: he recalls how difficult it was to place it among dogmatic concepts, in spite of the fact that its copyright law and press law aspects were unquestionable. (Through the Telephone Herald a poem of one of the Hungarian poets was disseminated throughout the city. An action was brought in the case; in the claim they asserted that this took place through mechanical reproduction; the objection made in the first instance was that this was not mechanical only acoustic reproduction. Therefore, they lost the lawsuit in the first instance; in the second instance, however, they made use of the fact that the court strictly insisted on conceptual definitions, and they based their argument on that. Finally the court declared usurpation without being excessively bound by concepts.) A similar problem was raised at that time by theft of electricity in terms of criminal law regulation, i.e., whether electricity is material or not; it was not decided, yet it was certain that taking it qualifies as theft. German regulation dwelled on it separately; it declared that electricity can be stolen although it is not material.

Kenedi asserts that outstanding progress in thoughts and jurisprudence is the main reason for reform, and that several concepts have in the meantime been determined more precisely, and

[82] Szladits 1906. 18.
[83] Szladits 1906. 22.

that the number of unlawful acts has widened. Concerning copyright, in stead of *theft*—which actually cannot be called theft since the point under review is a right of other nature rather than property in the traditional sense—one should speak about misappropriation, infringement of the intellectual property of another person. After expounding these thoughts he calls the audience's attention to the point that if they want to make reforms, they should not forget about the fact that people usually find loopholes, so it is worth taking great care to explore and eliminate them. According to his somewhat idealistic opinion alien to the reactive nature of law, it would be an essential aspect if judges were motivated to find frauds before rather than after they occur.

"Protection of author's rights should be governed, directed every time by two leading thoughts in terms of public interest and individual aspect."[84] The core of one of the thoughts is that freedom, movement of ideas, thoughts should take place in the whole society as extensively as possible without any restrictions. Kenedi's long-term hope is that free spreading should be absolutely unlimited but this can be realised only in the event that the state shows greater care for the products of culture, the arts; the other thought is that protection of the author—and protection of its own rights, which means copyright protection—serves public interest too.

Kenedi raises the question *"whether it is just that under the umbrella of protection of the creative work of human intellect inferior, valueless works and destructive products of the mind are given such protection too?"*[85] By that he means to tell the audience that albeit great poets would benefit from this reform, should protection be given to those who write "pulp works" with vocabulary and subjects incomparable to true literary works. He notes that he shares Márton's opinion with respect to usurpation, he also thinks that formulation is not precise, not perfect: it is worth comparing it to the 1901 German act because we can be surprised to experience that in those days the tendency of these laws embraced far more developed, far greater interests, which justifies it all the more to make a new act instead of the Hungarian copyright act. In his view the difficulty comes from the fact that it should be determined in practice who the actual owner of the literary work is; this can easily cause problems: is it the author or the agency to whom he has transferred it, or the person to whom the agency has transferred it. One should not forget that copyright means exclusivity; and Kenedi brings an example: a famous writer sold his work with his name written on it to a publisher, who exercised its acquired right; then another publisher took action referring to an earlier contract claiming that the author sold it to them earlier, six years before to be precise. Also, a case occurred where two, three or more publishers took action claiming that the work was sold to them earlier. Kenedi did not refer to names but he added that writers often forget which work they have sold already and so plenty of actions are brought. During them *"it happens that the suitor comes across a person who has not committed usurpation but stood on legal grounds and yet according to the law, since he had not made arrangements in advance, he is punished and obliged to pay compensation, at least to reimburse the interest although he is innocent"*.[86]

Copyright protection lasts for fifty years from the death of the author, and this raises further questions. German regulation is as follows: regarding these institutions more attention was paid to public interest: a period of thirty years from the death of the author was set, with one stipulation, however, which meant protection of excellent, appreciated works; more specifically if the work was published during these thirty years, then protection lasted for another ten years. This stipulation applies to scientific, mathematical works because it often occurs that their real value is revealed only later with the progress of technology and then

[84] Szladits 1906. 25.
[85] Szladits 1906. 25.
[86] Szladits 1906. 26.

copyrights are reserved for another ten years. This means protection of intellectual work of the highest level. Regulation similar to that would stand its ground in our country too, so fifty years would be reduced, which would be in the interest of national culture.
In the Hungarian act restriction of the right to translate a literary work and the author's translation right is unacceptable. It would be senseless and useless to maintain the rule that new translations cannot be made for fifty years from the death of the author, therefore *"the author should have right to his own work, if he has published it in a certain language, for fifty years from his death and if he has this work published in translation himself or by others, this should be limited to five years, furthermore, this should be on condition that he can start the translation during the first year and should complete it during the three years"*.[87] This is legal injury to the author too, which was solved in a form easier to handle in legislative practice abroad. We borrowed this outdated regulation from the earlier 1870 imperial statute; at the time of making the German act there was a view prevailing in Germany that the impact of literary works and the German intellect should not be restricted when the idea of the empire awakens, and thereby they wanted to attain that the idea and culture of the German empire *"should entrench itself in other countries"*. In Hungary this goal was achieved indeed since we borrowed the act from them, which cannot be considered a fortunate step, because we borrowed all of its faults instead of legislation having analysed this rule more thoroughly and having taken amendatory measures to make a more efficient act.
The next subject area he discussed in his speech was the issue of setting to music. Kenedi was also indignant at the procedure used inland against the author. The act was also improper because according to its rules it did not qualify as usurpation when an author's work was used for making a musical work, and the text was made together with musical accompaniment. The above-mentioned example of 'The Scoundrel of the Village' arises again. The inheritors of the writer of the work, Ede Tóth sued the writer of the libretto of the opera, who misappropriated the work; the case was referred to a national experts committee, which found that the all of the figures, names, characters and events that occur in the opera are equal to those in the work made by Ede Tóth, so the opera was a complete replica of Tóth's work, it was used without any material changes. The experts committee submitted its findings to the court, stating that *"this is usurpation proper and the court declared that—awful explanation of letters which Hungary's judicature cannot get rid of concerning many issues—it was not usurpation because the law allowed it."*[88] This example clearly shows that the reform of copyright law allows of no delay. The German regulation made in 1901 was more advanced because according to it certain parts of poems or minor poems can be used for setting them to music.
Then, he speaks about circumstances that unambiguously supports the need for reform. This is the issue of translation in a country where culture develops fast by integrating products of art, ideas, while works of national literature must be extraordinarily protected. In this country, in Hungary it is of key significance what rules on translation of works are like because the problem of possible injuries is decided in accordance with them, also, it is questionable what international contracts should be by which we regulate the right of translation in line with our needs. Hungary "exports" a very low number of literary works abroad; yet, compared to that plenty of works come into the country. Our literary balance shows a huge deficit since literary works, mostly from Germany, are flowing into the country in large quantities. In this respect he raises the question how we should pay for incoming imports and if we do pay tax to a foreign culture what we should pay for: *"For multitudes of inferior, weaker, valueless works, or is it able to arrange its laws in such fashion that if it protects translation of foreign works, then it should provide for translation so that genuinely precious works in the foreign culture*

[87] Szladits 1906. 27.
[88] Szladits 1906. 30.

that can enrich the nation's life and culture should be given priority."[89] Undoubtedly, international contracts should be concluded on the basis of this principle.
The next point of his speech was the issue of the Berne Convention. At the time of making the Hungarian copyright act, at the end of the 1800's, the foundations of the Berne Convention had been laid already, in spite of that an invalid act was made in Hungary. By 1906, most of the European states had ratified the convention, except for Austria-Hungary. The core of the Berne Convention is that it provides the author's right of translation in his own state; abroad, it allows ten years for starting translation, if translation has been started, it provides the same rights that he enjoys at home; this means much greater security for literary works. By this regulatory method valuable Hungarian literary works could obtain foreign markets, so it would be important to integrate the rules of the Convention in the reform—this view was shared by traders and publishers. At the relevant time it was not in the interest of our country not to ratify the international agreement, it was aborted by the Czechs and the Polish to hinder breakthrough of German culture in Austria. At the end of his speech Géza Kenedi notes that it is very difficult for our lawmaking machinery to adapt the act, although it would be of utmost importance to adapt to the needs of the nation: *"Beings that cannot adapt will scrape by or waste away: this is a law of nature."*

IV. 3. Emil Szalai's speech

In Emil Szalai's opinion—following previous speakers—Hungarian copyright act needs profound reform, although he does not find the present copyright situation so hopeless, yet, he would not highlight Act XVI of 1884 as a masterpiece of lawmaking. It cannot be considered a work of high standard either in terms of its wording, concept or structure; however, in the hands of a proper judge this rule of law can be used but only if the judge has a feeling for literary and artistic life. Applicability of an incomplete, inaccurate act can be helped by judicial practice and legal custom, if it does not get stuck on possibly less properly worked out statutory provisions, the judge can make up for deficiencies in dispensation of justice. He refers to the legal practice of France as an example for efficient application of old rules of law where copyright law is in a situation similar to that in Hungary.
In his opinion the Hungarian act could have been made better if the interests of the persons to be protected had been taken into consideration. In defense of the court it can be raised that copyright related cases are very rarely referred to them, so very rarely have they been in a situation where they had to adopt a decision with regard to copyright. Furthermore, it can be stated that artists, writers and publishers endured their cases alleged to be legal injuries without taking any action, they did not use protection provided by law, they endured that their works were taken unlawfully from them, were abused. Accordingly, such claims have not appeared in judicial practice, so far only a few have occurred in the capital city, lots of provincial courts have not dealt with any copyright related lawsuits at all. Possibly the situation would have been different if only the courts of Budapest, Kolozsvár and Marosvásárhely had been vested with power in copyright issues, and the professional standard of judging the cases would have been higher. If lawsuit had been conducted before the above-mentioned courts only, then practice would have matured much better and cases would have been handled more professionally since similar cases would have concentrated here, which would have made judges' work easier.
Szalai would not put emphasis on authors' legal protection in the reform—in his view this is set forth in the present act, and it is a question of interpretation only—instead, he would

[89] Szladits 1906. 31.

integrate institutions of social character. In his view, authors' attention should be called to the point that they should seek legal protection and request legal remedy of injuries in court, by which authors would recognise that they can obtain pecuniary advantages on the grounds of the present act too, and the growing number of illegal works in literary life could be eliminated; the most obvious form of that is setting up associations, professional societies, and bringing artists together in them.

Szalai does not consider it right to implement the reform in a form that underlines authors' (pecuniary) interests only and makes regulation paying regard to it, since it must be admitted that authors have moral, ethical interests too. Only a part of the authors believe that their prime interest is to increase their wealth by their work, lots of them put the emphasis on propagating, disseminating their own thoughts, ideas. Some publishers also intend to achieve that much rather than increasing pecuniary assets: for there are publishers that have been set up as non-profit organisations, for example, a political party or a social movement whose raison d'être is to disseminate the idea of literary works, but here the primary aim is not to increase proceeds but to recruit adherents and followers to their ideas. Several writers think that as acknowledgement of their work they expect an increasingly wide range of people to become familiar with their works rather than pecuniary assets. It is in the interest of society and the state that works should be disseminated as extensively as possible, however, it is also in the interest of them that pecuniary benefits should urge people to think or engage in writing, thinking regularly. As a matter of fact, it is also necessary that anybody who has talent in writing should be provided with financial means, should be able to earn a living from his artistic work. *"Therefore, harmony between culture and author's financial interests should be the guiding line in the reform of copyright law."*[90]

The former thought should determine the direction in the reform of copyright law, particularly in the field with international aspects and translation. He refers to the train of thoughts in Géza Kenedi'speech that domestic literature is not significant in exports, its imports are all the more significant. He thinks it should be deliberated whether it is domestic interests and values or the works of otherwise well paid authors that should have priority. It is needless to make efforts as soon as possible to pay increasingly high customs duties to countries that import books duty free, in the form of author's royalty through regulation of translation rights and international agreements. This is an important aspect regarding the issue of joining the Berne Convention—therefore, Szalai does not support accession to the Berne Convention either.

In the reform special emphasis should be laid on the need to revise the new act so that we should obtain financial benefit from imported works instead of the currently effective regulation under which foreign authors' works flow into the country without payment of any customs duty, by this shift giving a chance to publishers, translators to have foreign literature flowing in huge volumes marketed in Hungarian and thereby to generate profit. Competition on the market will favour dissemination of high standard foreign works too. Contrary to Kenedi's opinion, he thinks that Hungarian edition of popular scientific works should be entered in the market in a much wider scope at a lower price.

He specifically highlights the issue of the right of public performances because he considers its regulation rather obscure. Public performance is a special genre in terms of regulation since it is a less palpable work, not a lasting work in the traditional sense; therefore, original, independent provisions are required in this respect. Szalai asserts that section 50 of the act, which does not protect overtures of plays, is rather injurious. As an example he refers to *János vitéz [John the Hero]* by Pongrác Kacsóh: enterprises set up to present musical performances such as music cafes or music-halls allure the public (against payment of admission fee or using raised prices) by the music of *János vitéz*, however, during the

[90] Szladits 1906. 38.

performance guests will hear nothing else than the song *Egy rózsaszál [A Rose]*. In the case of another song, a part of a play, which was sung and played by orchestras throughout the country, only a minimum amount was paid by the publisher to the author when the author sold it to them before the first performance. The Austrian and German law regulates the issue more strictly for the benefit of the author, because it orders to pay fee to the author separately for each performance, while domestic authors get almost nothing for the right to perform the music of plays on the grounds of statutory provisions. Szalai would leave section 51 of the act in force with respect to the music of theatre plays too, and he argues that it is often in the interest of the composer and theatres to make the song known as extensively as possible to allure audience to the performances.

He calls the chapter of the act on penalties and compensation absolutely useless; he believes it needs to be reformed immediately. With respect to fundamental principles this part is extremely outdated, and in practice it has been proved that these rules ensure copyright protection to a low extent. Statutory provisions regarding usurpation have been made in a form typical of criminal law regulation, and perhaps, he adds, that is why the chapter has the title penalties. Whereas, the objective would be ”pecuniary indemnity”, and penalty should serve the author’s benefit: it seems to be less realistic that, if the author can see that the amount received from penalty enriches the state treasury and the author himself gets nothing due to his injury, he would bring an action in the case, whereas, if he had pecuniary advantage from the lawsuit, in addition to moral indemnity, then he would take action sooner before court in case of injury. The German regulation considers the author’s compensation an issue of prime importance, the title of the relevant chapter is *Rechtsverletzungen*: it puts compensation in the centre, the issue of penalty is secondary, the amount of the fine imposed by the court is payable to the author, and penalty, which is payable to the state treasury, can be imposed additionally.

IV. 4. Sándor Marton’s speech

Sándor Marton at the beginning of his speech sets his fundamental principles regarding the reform. The first thing he mentions is that the author himself should enjoy the financial benefits of his work, that is, only the author should be ale to “exploit” intellectual activity financially. The other direction is protection of the author’s moral values. The author’s protection from two directions gets in conflict with the interest of the state, more specifically cultural interests, *”the education developing force implied by the products of human mind should be provided for the plenitude, which necessarily involves restriction of the author’s claims for protection”*.[91] Restriction shows itself in the fact that the form into which the author casts its work comes only from his own inner self, however, each author draws inspiration to make his work from the common treasures of mankind and merely adds his own ideas, thoughts to it. Accordingly, he refers to the Italian act that states that the author works for mankind, and social order provides the author with enjoyment of his work solely within the term of protection. (Marton stresses that Jhering, through the law of persons approach, classified usurpation claim as *iniuriarum actio,* and the only available Roman law reference to it in the copyright law systems of the turn of the century is the one that Ulpianus expounded when he spoke just about *iniuriarum actio*: *”…iniuriam damnum accipiemus … culpa datum, etiam ab eo, qui nocere noluit”*.[92])

Ample literature supported the German law of property approach that copyright is property right—in this field Proudhon’s approach was the most extreme: he compares the author who

[91] Szladits 1906. 45.

[92] Ulpianus, *Digesta Iustiniani* 9, 2, 5, 1.

sells his book to a woman who offers her charms for sale. Marton asserts that Roman law and the authors of the antiquity left nothing to us with regard to copyright from which we could set out in this question; this problem occurred owing to spreading of printing and paper only, mostly from publishers' point of view, since copyright developed from bans on reprints.

Setting out from the little available legal sources, János Suhajda, in his private law, advises writers, judges *"that everybody should help himself as he can"*. Marton refers to the case of Jenő Rákosi as an example: in 1878 the director of the German theatre in Gyapjú street announced performance of the play entitled *Niniche*, however, the right to perform this play was obtained by Jenő Rákosi, director of the Folk Theatre, so they applied to the police for banning the performance of the play, and on the opening night of the play the performance was banned indeed. As a matter of fact, the director of the German theatre lodged an appeal in the case, but the police action was approved in the second instance too. In 1878, when copyright acts had been made all over Europe, police intervention in a case of private nature was justified by the general principle of prevention. It was under such circumstances that the draft bill on writers' and artists' property rights was published in the yearbooks of the Kisfaludy Society, which was made by László Arany, who acted on the verge of writer's and lawyer's profession, and which formed the basis of Act XVI of 1884. Marton's opinion is fully identical with the opinion of earlier speakers to the extent that the act on copyright can be radically reformed only in the event that publisher's rights are reformed simultaneously.

Concerning the right of translation Marton believes that section 7 of the act can be maintained to enable works to get to readers extensively. The author's right is sufficiently protected because in the case of his own authorised translation the author enjoys the normal term of limitation of copyright, that is, the principle of *volenti non fit iniuria* prevails. If the author does not exercise this right, it can be presumed that he does not want to prevent his work from becoming public domain. However, he believes that the reservation and notification procedure should be repealed, and he would determine a period of three years uniformly for term of protection reserved for the author with respect to translations.

According to the reasons of the act, the nature of usurpation brings about that copyright injury can be remedied if it has been retaliated within a short time. Marton also believes that retaliation of usurpation carries criminal law elements, and it follows from this that the party injured by usurpation have almost the same rights as the injured party within the scope of acts of criminal law with request for prosecution. Determination of the term of limitation creates harmony with the criminal code: according to section 22 of the copyright act usurpation is implemented upon the first reproduced copy of the work has been (unlawfully) completed, however, limitation begins, according to section 36, from commencement of the distribution, publication of the work. Only usurpation set forth in section 23 of the copyright act, businesslike offering for sale and distribution can be considered usurpation committed against the author's pecuniary interest, however, limitation of the related claim will commence as from the last day of distribution. If the author has not intended to exercise his right during the three years available, then it can be presumed that he has not considered it injurious.

Turning to the issue of adaptation, he puts the question to what extent it is allowed and when adaptation is usurpation. At this point he condemns German regulation because he finds it too strict that it is the author's exclusive right to arrange his narrative work for the stage and vice versa. *"The author's work is the individual shape made perceptible in which he presents his own thoughts."*[93] It follows from this that pure plagiarism does not qualify as usurpation: processing of the thoughts of other persons might as well produce a new work. Marton asserts that the dividing line between plagiarism and usurpation cannot be absolutely marked, it should be analysed on a case by case basis whether an independent literary or artistic work

[93] Szladits 1906. 51.

has been produced through processing the basic thought. According to paragraph 1 of section 9, inclusion of minor parts of specific works and minor papers in volume justified by the purpose in an independent scientific work is allowed—so it is important that the work into which they are imported should be a scientific work of greater importance.
With respect to works of the fine arts he demands thorough revision of the act. Comparison of sections 61 and 62 shows striking analogy: paragraph 2 of section 61 considers remaking infringement of copyright even if the original work is imitated in another genre or another kind of art; according to paragraph 2 of section 62, however, it shall not be considered infringement of copyright when specific replicas are made not for the purpose of marketing. *"This is the anomaly; while simple copying in the same kind of art can be carried out without any hindrance permanently, adaptation in another kind of art requiring separate independent work is prohibited even in specific copies."*[94]
He raises the issue of infringement of copyright in musical works when adapted to gramophone or phonograph. According to the German act this qualifies as reproduction: *"durch Platten, Walzen und ähnliche Bestandteile von Instrumenten … welche zur mechanischen Wiedergabe von Musikstücken dienen"*, which is allowed all over Europe, except for Hungary. According to section 5 of the copyright act, mechanical reproduction of the author's work can be considered infringement of copyright but according paragraph 2 writing down is also mechanical reproduction if it is used instead of mechanical reproduction. In musical works, it is not the musical notations or the score but the musical thought itself that is protected. According to section 45 usurpation—properly applying section 5 and paragraph 2 thereof—can be committed in all the forms in which the musical thought, the author's combination of sounds are recorded in such fashion that the musical thought can be reproduced from it. Notes are merely tools to produce sound; sounds, however, can be remade not only by notes but by plenty of other tools, such as phonographs. With regard to protection of musical works, Marton asserts, it is not enough to makes sure that musical notations could not be duplicated through printing, protection should be provided for writer's works for the case when they are made for the blind by relief printing, and protection is required for musical works too when duplication is made not by duplicating notes but by another method.
Section 22 of the German act contains restriction of composers' rights, section 9 of the Hungarian copyright act lists item-by-item the measures that restrict the author's natural right, however, it does not contain any restrictions regarding permitted forms of reproduction and publication. Irrespective of the German regulation, the Hungarian regulation in force at the turn of the century qualified marketing of musical works through gramophone as injurious conduct.
In the debate of the German copyright act, the *Reichstag* requested the chancellor to enter into negotiations with the states that acceded to the Berne Convention of 9 September 1886 that they should prohibit arranging musical works, without the author's permit, for any musical instrument by which musical works can be reproduced. Thus, they speak about reproduction only in the event that the work is produced in a determined number in such form from which it becomes possible to communicate the author's thoughts to others but it does not need to be made in the same form as the original. Furthermore, it is not necessary that the same audience should be addressed by it, so mechanical reproduction advances perceiving the work by other sense organs. With regard to mechanical reproduction they stated that it is equal to printing in terms of form, purpose and essence, so it can be classified into the same category as printing also in terms of usurpation—albeit, an expert can somewhat enjoy reading musical notations, their readability is not condition of the copyright protection of the musical work, the general public can enjoy them only in the forms of sounds. Section 46 of the copyright act states that:

[94] Kováts 1879. 41.

”Any adaptation of musical works published without the author’s consent that cannot be considered own composition shall be considered infringement of copyright. Such as … arrangment of musical works for one or several musical instruments … or impression …of their melodies.” Marton asserts that it follows from this that the gramophone is an arrangement of musical works for gramophone-musical instruments apparatus.
Marton claims that Kenedi’s standpoint—that copyright protection should not be extended to pulp works—is an outdated view. The question occurs to him whether exclusion from protection might produce contrary effect and make them more competitive on the market: if a work has obscene content indeed, then it belongs to the relevant state of facts of the effective criminal code. Their opinions are identical at one point: all printed products should not be necessarily provided with copyright protection; at that time there were attempts to protect plenty of printed materials by copyright, which owing to judicial dispensation of justice were protected indeed (for example, price lists, programs, playbills). The speaker does not consider it right because in his view these products belong to the sphere of unfair competition and not to the scope of copyright.
The opinions of Marton and Kenedi regarding state agreements are completely identical: the issue of state agreements is an economic issue. He considers the first agreement an erroneous measure: our country entered into this agreement with France in 1866 on copyright, when the term of protection of translations regarding French works was unlimited, while Hungarian works were not provided with any protection. Lacking statistical data, however, relying on his information, he asserts that annually approximately five hundred literary works and ca. forty stage works in foreign language are staged in translation in Hungary. It follows from this that we pay a huge amount abroad for obtaining translation rights, and only a fraction of it is returned to us. He believes it would be worth following the German legislative practice and narrowing authors’ rights ”in terms of industrial policy”.

IV. 5. Samu Fényes’s speech

In his speech Samu Fényes holds the position that the Hungarian copyright act is in every respect and by all means the worst possible act. In his view, it would be more favourable for the protection of culture and copyright if this regulation did not exist at all.
Similarly to Miksa Márton, he tries to interpret section 7 of the act, and he finds that this section of the act is incomprehensible: *”But we who say that we do not understand it understand more of it than those who say that they understand it because those who say they understand it do not understand it at all”*.[95] He believes it is shocking in the act that the first possible state of facts regarding usurpation is that anybody who translates a work made in a dead language into a living language commits usurpation. He points out that this was borrowed from the earlier German regulation and that this regulation was introduced in Germany because they wanted to ensure translation rights to the *Sprachwissenschaftliche Gesellschaft*, and it had its significance in Germany since this company published texts in eastern dead languages in huge volumes—this is not really needed in Hungary. This means that it is much more worth writing works in dead languages and translating them into Hungarian because then they will enjoy five years protection.
He finds that paragraph 3 of section 7 has been indeed worked out in accordance with domestic interests: translation without permit shall be considered usurpation only in the event that translation has been commenced within one year and has been completed in three years. He underlines the incomplete structure of the act when it states in one sentence that

[95] Szladits 1906. 70.

publication shall start within one year, in another sentence it sets forth that translation shall be started, which is not the same. So, if anybody starts translation within one year and publishes it after three years have passed, then it will not qualify as usurpation, however, if he publishes it within three years, the case of usurpation does not hold either. It is an interesting point in the regulation that translations of theatre plays shall be completed within six months from publication of the original. *"As in the introduction the section sets forth the cases of usurpation, obviously it should be interpreted that the statement here means that it shall be completed within six months from publication of the original to implement usurpation. But it has no sense really that it should stipulate quasi as an order how one shall usurp, so only another sense can be attributed to this provision."*[96] An imperative norm due to its nature cannot be qualified as author's protection.

It is the fault of the act that it does not sufficiently protect property rights because after one year it makes translation free and only one collected edition from several literary works can be published under copyright protection. *"Only these two cardinal requirements can be bound to copyright: that it should protect the author's financial interests, his right to his work, i.e., property rights; secondly, that it should protect individuality of his work, i.e., moral powers and as this act does not achieve these goals, it is necessary to make a law that enforces these two postulates."*[97]

In the rest of his speech, he discusses Kenedi's position regarding pulp fiction. Kenedi would provide protection against immoral, low standard works, and Samu Fényes agrees with it to the extent that there is no forum that would determine what qualifies as obscenity. He adds that it is noteworthy that compared to general conditions of world literature the number of pornographic works in Hungary is outstandingly high, the reason for it, he says, is presumably that they can be taken by anybody, the three years that protect the author pass quickly, and after that the work becomes a prey, it is easy to fill the market with it; it costs nothing, it needs no science or linguistic skills, and we get a useless literary work. On the contrary, he believes scientific works in Hungarian are very rare in the market, apart from a few works. Turning the above argument the other way round, copyright should protect trash for long years so that writers of trash should deliver their work for reproduction only for high valuable consideration and this would make the price of trash rise, so it would not be possible to enter the market with cheap publications.

In Samu Fényes's opinion, reform of the copyright act can be implemented solely in the event that writers are protected against translations and collected editions, and for this reason this right of protection should prevail for thirty-forty years from the death of the author with regard to translators of foreign works too.

[96] Szladits 1906. 72.
[97] Szladits 1906. 72.

V. Elemér Balás P.'s reform proposals

We intend to present reform efforts made in the field of copyright at the beginning of the 20th century to reform Act LIV of 1921 through the works of Elemér Balás P. in harmony with the Berne Convention and the Rome Convention.

IV. 1. Evaluation of the Rome Convention

Act XXIV of 1931 enacting the international agreement made in Rome on protection of literary and artistic works introduced essential innovations in copyright law for the benefit of authors who were not Hungarian citizens, however, belonged to the Berne Convention—these rules did not extend to Hungarian citizens. Balás believed that in this field there was a need for harmony because the convention put foreign authors in a considerably more favourable position, and new rules represented progress in interpretation of copyright.[98]
The innovations that the international Rome agreement implemented are manifold. On the one hand, they relate to what kind of protection authors can expect to have, on the other hand, to the extent of the protection that authors are provided with. In accordance with the Rome Convention the author was entitled, in addition to pecuniary protection, to other protection too—although its overall name was not specified in the Convention, specific rights were listed in it, which the author was entitled to, according to the Convention, irrespective of economic rights, what is more, even in the absence of such rights—thus, to legal protection due to personality. The natural condition of these protections was that there should be an intellectual work to which such right applies. The Convention widened the scope of works provided with copyright protection by enumerating works that the Convention in force at that time did not refer to separately; on the other hand, it provided protection for the forms of publication of works having been expressly protected anyway that were made significant in practice by new progress in technological development, for example, for making public by radio.[99]

V. 2. Impact of the Rome Convention

To state that lectures, preachments and other speeches in general were provided with copyright protection too represented innovation only in terms of form. Although Act LIV of 1921 on Copyright did not refer to these works expressly in addition to author's works, it is indirectly clear from its specific provisions that such oral works are provided with protection too. The innovation that clearly ensured application of copyright rules to publication by the radio has greater significance.[100]
The innovation on personal protection, however, has outstanding significance. Act LIV of 1921 did not expressly contain any provision which stated as a general principle that the author's moral rights are protected. The Act did not distinguish the author's economic rights from his protection enjoyed in other respects, even less was it set out that pecuniary protection was not a prerequisite for enforcement of protection applying to the author's other interests.[101]
By express acknowledgement of the author's moral rights in law it was not possible to maintain the system of regulation of copyright prevailing at that time, which was based on the exhaustive enumeration of works provided with copyright protection and of the author's

[98] Balás 1938. 3–4.
[99] Balás 1938. 4–5.
[100] Balás 1938. 5.
[101] Balás 1938. 6.

rights to sell them. In Balás's view, the proper system was built on general rules, and the enumeration of specific works and rights was only a list of examples, and the list of the restrictions of the author could be an exception only. Furthermore, he proposed to dispense with the division based on the difference of works under copyright protection, to think over fundamental concepts of copyright and modernise terminology.[102]

V. 3. Elemér Balás P.'s motions for amendment

V. 3. 1. The intellectual property

Balás tried to grasp the core of intellectual property on the basis of the criteria of originality, on the one hand, and suitability for being made public, on the other. Originality does not mean newness only but an individually new character. Stressing individual character in the determination of intellectual property makes it clear, however, that publication of general laws or facts undoubtedly definite in their simplicity in a new form shall be covered by copyright protection. Suitability for being made public means recognisability by others, the phase of the act of intellectual creation when the work becomes suitable for producing impact as a work on those to whom it is available. He stressed: it makes no difference how the intellectual work is recorded just as it makes no difference what intellectual value and degree of originality the work has. Determination of the character of intellectual property and the scope of copyright protection is not an evaluating but a qualifying, logical activity. So, works of applied art would continue to be protected intellectual products.[103]

V. 3. 2. The author

Balás expounds that new acts that will be possibly made should contain the definition of the term author. The proposed new system would distinguish between the protection of the author's intellectual and pecuniary merits, and would provide the former in general only for real authors in the sense of creators of intellectual products, while it would make it possible to exercise economic rights in business transactions too. The necessity of definition is supported also by the fact that even in the case of transferring economic rights the author retains intellectual rights, thereby mere implementing activity falls out of the scope of the concept of the author. Furthermore, it is supported by the fact that in general it is intellectual activity that governs and not other, especially business aspects—otherwise of whatever great significance with respect to creation of the work.[104]

He asserts that the significance of the term of co-authors is especially true regarding motion picture works, where numerous contributors perform activity in making the film, which is regarded as author's activity, however, the activity of none of the contributors stand alone and cannot be placed in the usual relation of co-operation of co-authors. It must be admitted that with respect to the development of a motion picture work the most important aspect is the business interest of the company that wants to sell the motion picture work. In Balás's opinion, with respect to the definition of the author of motion picture works the lawmaker should adjust to real facts and should state that with respect to motion picture works produced within the scope of a business company the protection that the author is entitled to will be provided for the person whose entrepreneurial activity has created the film.[105]

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[102] Balás 1938. 9.
[103] Balás 1938. 10–17.
[104] Balás 1938. 17–19.
[105] Balás 1938. 19.

Furthermore, full copyright protection shall be given to editors of compilations and creators of the method of putting plays on stage as a whole, provided that they have created an intellectual product by their intellectual activity. Such authors, however, may be provided with protection that leaves the rights of the author of the original work untouched, but their protection would be independent of whether copyright protection lies or not in primary respects.[106]

Balás claims that it is necessary to expressly provide for the author's intellectual interests and their protection. In this respect it should be stated that irrespective of the author's economic rights—what is more even in the case of transferring them—the author will retain his right to establish his claim to the authorship of the work, furthermore he retains his right to object to any distortion, mutilation of the work or any other change of the work that might be injurious to his honour or reputation.[107]

It shall be left to the author's absolute discretion if he creates his work and if he makes it public, furthermore, if he makes his capacity as author public. Furthermore, the rule to be made affects the author's intellectual interests, which sets forth that transferred economic rights may be transferred to another person only with the author's or his inheritor's consent. Balás proposes deviation from effective copyright law also to the extent that the author's economic rights do not need to be determined exhaustively; instead, the most important ones of them should be listed as examples.[108]

With respect to the author's economic rights, the person who has provided help to the author merely by critical remarks, revisions, correction of obvious errors or in a similar form shall be regarded identically as a co-author, provided that an agreement to this effect has been entered into with the author. This kind of contribution is not a creative activity in the strict sense, however, if the author himself deems so, there is no reason for the law to refuse the contributor to exercise economic rights a co-author is entitled to, with respect to the work, on the grounds of an agreement.[109]

V. 3. 3. Sanctioning of violation of copyright

Balás, with respect to private law consequences of infringement of copyright, would materially deviate from effective copyright law. Accordingly, it would be also possible to institute an action merely seeking discontinuance or barring repetition. It would be also a material innovation that the injured party, instead of compensation for damage or delivery of enrichment, might at its discretion claim equitable fee, furthermore, that, within compensation for damage, could claim delivery of net profit exceeding it from the infringer.[110]

Also, he was pointing forward when he proposed that punishable cases of infringement of copyright should be determined in details. With respect to criminal liability of the owner and the principal, if the offence has been committed by a company employee or an agent, and the company's owner or the principal is responsible for wilful or negligent default in fulfilment of his supervision or controlling obligation arising from his office, the company's owner or the principal shall be punished due to his offence. The great significance of this provision is obvious specifically in the scope of copyright. With respect to determination of penalty it should be necessary to deviate from effective copyright law to the extent that application of

[106] Balás 1938. 21–22.
[107] Balás 1938. 22.
[108] Balás 1938. 23.
[109] Balás 1938. 27.
[110] Balás 1938. 40.

punisment of imprisonment should be made possible in the case when the perpetrator is habitual.[111]

V. 3. 4. Regulation of new technological achievements

He proposes to regulate specific subjects of the protection of copyright not within the frameworks of general rules but among miscellaneous provisions. Works of photography shall not be regarded identically as other subjects of copyright since the definition of intellectual product cannot be applied in its full extent to works of photography because they are not the results of intellectual activity exclusively for in their creation use of machine is indispensable. So, he intended to restrict protection of photographs to the extent that it should cover solely products of significance exceeding photos produced in industrial form, requiring common, mere technical knowledge. Authors of motion picture works shall be regarded in legal terms identically as photos.[112]
Furthermore, he proposed separate regulation for the protection of text images (illustrations), maps, plastic works, globes that cannot be considered works of the fine arts or applied arts, geographical, topographical plans, drawings, figures or sketches as well as engineering, technical or scientific plans, drawings, figures or sketches not showing newness. As their newness is temporal, not individual since finding the particular solution does not arise from the peculiarity of a non-recurring individual but depends on chance in time.[113]
Also, he made a noteworthy proposal on supplementing the rules of patent law to the extent that copyright protection identical with the protection granted to linguistic works shall be provided for patent descriptions until a patent is granted or, if a patent has not been granted, for five years from publication of the notification in the official journal ordered to serve this purpose.[114]
With respect to making public by radio Balás expounds that making public by radio is publication irrespective whether the author's work has been published already or not, and as such it belongs to the scope of copyright. Making the author's work public by radio is an activity in which reproduction, marketing and publication are carried out simultaneously.[115]
Regarding the radio section 56 of the copyright act is significant to the extent that, compared to what has been expounded, it is the person who has been named as author in the notification advertising the performance that shall be considered—until the contrary has been proved—the author of theatre plays, musical plays and musical works not published yet but already performed by radio.[116]

[111] Balás 1938. 41.
[112] Balás 1938. 42–44
[113] Balás 1938. 45.
[114] Balás 1938. 47.
[115] Balás 1927. 9; 13.
[116] Balás 1927. 15.

V. Our copyright acts

In Hungary, as a result of state law relation, the development of author's rights was similar to the process in Austria. Separate legislations of the two states could not prevail until the source of publisher's and author's rights was the ruler's power to grant privileges. The first regulation of intellectual work was provided by the royal decree no. 12157 on 3 November 1793. This decree prohibits unlawful reprints under pain of pecuniary fine and compensation to be given to the author. It extends right of indemnity to the author's legal successor *(cessionarius).* The right is bound to limitation, for which no timeframe different from the normal was set by the royal decree. It continues to bind new publication to "licence of book censors" *(censura),* however, it extends it to the author's or his legal successor's consent. The decree does not stipulate any protection for foreign authors. The decree was followed by an amendment in 1794, which provides mutual and identical protection in Austria for prints published in Hungary and vice versa.

Increasing needs of life and enhancing circulation of intellectual goods as well as policy aimed at setting the press free brought along more independent development of author's rights. The reform movement prevailed sooner in Hungary than in Austria but lawmaking results were not introduced. Upon the initiative of the Kisfaludy Society, Bertalan Szemere, in addition to acting as chairman, created the first Hungarian copyright bill. The bill was made after the 1837 Prussian bill, and was approved at the 1844 national assembly and was submitted to the king. The bill referred infringement of author's rights from the powers of public administration to the jurisdiction of criminal courts. The king threw the bill back by an evasive warrant for being amended, however, the amendment was not made since by then the court was busy making the draft of a new copyright patent for the eternal provinces of Austria. [117]

The Austrian patent on protection of literary and artistic property was promulgated on 19 October 1846, and the king requested the chancellor to issue an opinion on application of the patents in Hungary. Based on the report, the Governor's Council of Buda was instructed to redebate the 1844 national assembly bill, paying regard to the rules of the patent effective in Austria. The Governor's Council forwarded the bill and the Austrian laws received from the chancellery to the Hungarian Royal Book Reviewing Office for being commented upon and making a report. The report was made, and on 27 July 1847 it was submitted to the king, and based thereon a new government authority draft of law was made for Hungary, which the 1847 national assembly should have debated, however, this was prevented by political events.[118]

In Hungary until 1849 the 1793 royal decree was in force, while in Austria the patent of 19 October 1846 was effective until the copyright act of 26 December 1895 entered into force. Although in Hungary Act XVIII of 1848 declared freedom of the press and released the printing house from the shackles of old administrative regulations, and *"Act XXXI of 1848 on Theatres"* abolished censorship of theatres, the regulation of author's rights was not carried out. After the fall of the 1848-49 War of Independence, the imperial decree of 29 November 1852 put the imperial patent of 19 October 1846, together with ABGB, into force also in Hungary as from 1 May 1853. This patent had statutory effect until 1861, and in Transylvania up to the time when Act XVI of 1884 was enacted.[119]

In the course of the overal revision of laws in 1861, at the National Judge's Conference the regulation of copyright was also addressed, however, as there was no constitutional statute in

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117 Knorr 1890. XII. f.; Kenedi 1908. 10.

118 Knorr 1890. XIII.; Kenedi 1908. 10. f.

119 Knorr 1890. XIII. f.; Kenedi 1908. 11.

force in this field yet and the NJC wanted to refrain from passing on the Austrian conditions of law in this respect too, the following theoretical statement was inserted in Section 23 part I of the Temporary Judicial Rules. By acknowledging that intellectual works could constitute the subject of property, protection of author's rights was referred from the scope of administrative and criminal courts effective until then to the jurisdiction of civil courts.[120] Although the legal condition so evolved did not reinstate the force of the royal decree of 1793, it provided ample room for law-substituting judicial practice as theoretical declaration of intellectual property. Nevertheless, we can speak about progress since from then on licencing of book printing and reprints by authorities was no longer discussed, and the powers of civil court now extended not only to the book but to all literary, fine arts and musical works and both their reproduction and public performance.

General legal conditions were basically not changed by Act XVI of 1867 on the customs and commercial union entered into between the countries of the Hungarian crown and other provinces either, which mentions in Section 19 of the first customs and trade agreement between Hungary and Austria that owing to mutual protection of writer's and artistic property on the territory of both states an agreement would be made through the two legislations. This statement was included also in Act XX of 1878 on the customs and commercial union between the countries of the Hungarian crown and the rest of the provinces belonging to Austria-Hungary, however, it was implemented only in the agreement set forth in Act IX of 1887, which was entered into between the two states already after putting Act XVI of 1884 into force.[121]

Further regulations are contained in Section 9 of Act XXX of 1868 on enacting the Compromise with Croatia and Slavonia, which ranked legislation on writer's and artistic property under the subjects of joint lawmaking, so these fields in this respect were not granted autonomy. A notable fact of lawmaking was set forth in Section 2 of Act XVI of 1867, which enacted the earlier international agreement entered into by the absolutist government with France on 11 December 1866, mutually providing ownership right of intellectual and artistic works, and fairly encouraged further development in law.

Hungarian legislation made the first step in codification concerning statutory regulation of Hungarian publisher's and author's rights by regulating the publisher's transaction in title 8 part II of Act XXXVII of 1875. Although this statutory provision regulated only the legal relations of authors of literary, technical or artistic works and publishers engaging in reproduction, publication and marketing and solely for the case of lack of any contract; yet, it already used the results of legal development attained in Europe. New efforts were boosted especially by the German copyright act of 11 June 1870—not only by its stipulations satisfying both general needs and requirements of jurisprudence, but by the fact that it was edited by clear legal technique and replaced old administrative interventions by regulation of court proceedings.[122]

In 1867 the Kisfaludy Society took the thread dropped in 1844, and worked out the draft of the new copyright bill, however, it reached the Ministry of Justice only. Yet, after entry into force of the German statute of 1870, preparation of the act was carried out with greater success in the Society of Hungarian Writers and Artists where especially owing to Gyula Kováts's efforts the bill was completed in 1874 already. The bill paid special regard to Hungarian conditions that required independent regulation in several respects, however, the bill was forced into the background due to the political conditions of the period and other tasks to be fulfilled in codification deemed more important, such as the Commercial Code of

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120 Knorr 1890. XV.; Kenedi 1908. 11.

121 Kenedi 1908. 12.

122 Kenedi 1908. 13.

1875.[123]
In the meantime, the German legislation, now having become uniform, continued codification of copyright. In 1876, the act on copyright of artistic works and unlawful imitation of photographs was made. So, exhaustive sample acts meeting requirements of scientific demands were already available to inland reform efforts: it was again the Kisfaludy Society that now for the third time, this time joining forces with the Hungarian Academy of Sciences, continued the work of codification. László Arany made a single draft of the law on literary, artistic and photographic copyrights, Tivadar Pauler Minister of Justice submitted this draft to the professional conference and, after it had been reworked, to the House of Representatives on 20 November 1882. The judicial committee of the House of Representatives submitted its report to the House of Representatives as early as on 9 February 1883, however, general debate commenced there on 21 February 1884 only. Upon the instruction of the House of Representatives the judicial committee redrafted the text of several sections. The final text of the bill was attested by the House of Representatives on 12 March 1884, and the Upper House approved it without any changes on 28 March. The act so completed was sanctified by the king on 26 April 1884, and it was promulgated in the National Statute Book on 4 May and in the House of Representatives by Act XVI of 1884.[124]

VI. 1. General provisions

VI. 1. 1. Introductory provisions and general rules

The theoretical basis of Act XVI of 1884 was borrowed mostly from the German *Urheberrecht* of 1870; the old approach to intellectual property rights was eliminated during the preparatory works, and the ministerial proposal considered author's rights as an independent and uniform scope of right. The fields protected by the act are as follows:

- writer's works
- musical works
- theatre plays
- all works of the fine arts
- photography and related reproduced representations
- maps
- natural science, geometrical, architectural and other technical drawings and figures. [125]

In covering works of photography with the same protection as writers' and artistic works it was a decisive reason that in our country photography had become a real art, therefore, effective protection would serve its further development.[126] (Branches of industrial right protection were regulated in separate acts.) The act ranked protection of fine art works that having lost their original character were used for industrial and applied arts purposes among the above. This act protects the author's right of sale regarding intellectual property in the first place. It pays no special regard to personal rights the author is entitled to. The natural basis of the author's right is the artistic form in which the author has *"fixed"* it, and the author can benefit from that by making it public, in other words, by making it public domain. Consequently, as much as it is possible in the circulation of intellectual goods, the act protects the author from pecuniary abuses in this procedure.[127]

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123 Kenedi 1908. 13.
124 Kenedi 1908. 14.
125 Kenedi 1908. 20. ff.
126 Kenedi 1908. 31.
127 Kenedi 1908. 31. f.

Restrictions of this protection are as follows: the author is entitled only to the right of mechanical reproduction, publication and distribution and for a shorter period to the exclusive right of translation; for theatre plays and musical works public performance is the author's exclusive right. The author will not be entitled to protection if he presents certain facts only in his work; these facts may be used by other persons too, even if they constitute the core of the otherwise protected work; so, the act does not define the term of "intellectual monopoly"**.** The act intends to make it possible for Hungary to enter into regulated copyright circulation with other nations too on the grounds of this act, and at the same time establishes unity of law on the entire territory of the State, to the extent that it terminates the rule of the Austrian open order of 1846 being in force until then in the Transylvania parts, and extends the scope of the act to Croatia and Slavonia. Regarding the issue of limitation, the bill considered thirty years' term of protection from the death of the author more appropriate for the sake of spreading of intellectual works, however, the House of Representatives approved fifty years' term of protection paying regard to creators' earning conditions.[128]

Statutory legal consequences of usurpation: fine, compensation for damage and confiscation, which the judge may connect with provisional seizure of the disputed work—the legal grounds of the penalty is fraud involved in usurpation, and recognition of the fact that it is not possible to protect the author's lawful interests purely by private law tools. In imposing the penalty, malice and negligence showing in usurpation can be taken into account; in the absence thereof penalty does not lie, and compensation is confined to delivery of unlawfully obtained profit only. It was the author or his legal successor injured in his rights who was entitled to propose penalty; so, it was not possible to impose the penalty ex officio. The entire proceedings were remitted to the powers of civil (private law) courts, and the act granted discretionary powers, before the general procedure reform already, paying regard to the judge's difficulties in proving loss and malice. As a "correction" thereof, in Budapest and Zagreb they ordered to set up permanent law and experts committees to address professional issues. In order to ensure timeframe of translation, the act borrowed the institution of registration from earlier French and German law.[129] The act set the limitation of the claim in three years both with respect to penalty and compensation; however, the legal consequence of confiscation and annihilation did not lapse, and so it could be requested even after limitation of the claim until the usurped work was circulated or it was possible to find the assets that could be confiscated.

With respect to publisher's rights, Act LIV of 1921 left the regulations on publisher's transactions set forth in title VIII part two of Act XXXVII of 1875 (Commercial Code) untouched. These rules were applied solely with respect to publisher's transactions between the author and his publisher but even in this scope only in the event that the contracting parties did not regulate their legal relations otherwise or left them unregulated regarding certain questions. In case of infringement of the publisher's right outside the scope of the publisher's transactions (usurpation), it was the provisions set out in section 6 of the act rather than the provisions on publisher's transactions that were to be applied, even if usurpation was committed by the author himself.[130]

The lawmaker considered Act LIV of 1921 outdated in its approach since fundamental changes took place after the Second World War. Structural changes in cultural life made adoption of new copyright rules a current issue. The main objective of Act III of 1969 formulated that it was to harmonise encouragement of individuals' disposition of creation and protection of authors' moral and economic rights with the requirements of the development and cultural needs of society. Accordingly, the act distinguishes the author's so-called moral

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128 Kenedi 1908. 32.
129 Kenedi 1908. 32. f.
130 Kenedi 1908. 33. f.; Szalai 1922b 13.

rights from economic rights related to use of the work. Respecting inherent, moral rights means that the author can decide on making the work public and can challenge all unauthorised changes in or use of the work. Moral rights cannot be sold or purchased, cannot be transferred and will not lapse.

The act strengthens protection of authors and their works with respect to economic rights too. In this respect it is a fundamental thesis that any use of the creation requires the author's consent, and it can be carried out against a fee only. Furthermore, the act takes society's general interests into consideration, especially in two respects. a) It enables the radio and television to broadcast programmes on various works without the author's consent but with the name indicated and against a fee, and to deliver such programmes to other radios. Also, it allows that in case of aids made of any work already made public, for scientific, general education or education purposes, excerpts or independent works of smaller volume could be used to the extent justified by this purpose. b) It excludes that authors' legal successors could protest without good cause against further use of works already made public. In this case the court may supersede the licence to use against a fee.

The act takes into account that owing to the technical development over the four decades passed from Act LIV of 1921 new genres have evolved, and extends copyright protection to them. So, industrial designer's activity, i.e., industrial design, increasingly develops as a peculiar branch of art. The act, paying regard to the function, peculiarity of the scope of use of industrial design, sets the frameworks of rights related to industrial designs.[131] Furthermore, technological development made it necessary to set itemised determination of copyrights related to filmmaking, radio and television. The act regulates, in theory, the issue who and to what extent is entitled to right of use of works made under employment relation. In accordance with the act, right of use of the work, based on the content of the author's obligation in his sphere of work and the employment relation, belongs to the employer—within the sphere of activity of the employer organisation.

Identically with the present regulation, the act stipulates that the term of protection of copyright covers author's life and fifty years from the death of the author.

Development of copyright has raised the question of protection of performers' performances. The act represents progress also in this respect as it states that the authorisation of the performer or, in case of ensembles, of the leader and soloists will be required for recording the performance for the purposes of marketing or public performance or for broadcasting the performance to persons not present, and that the performer will be usually entitled to fee for such use.[132] The act also provides for performers' moral rights.

Finally, it should be mentioned that the act discontinues the concept of Act LIV of 1921: it puts writers' works in the focus of regulation and relates general provisions to them. The act, avoiding excessive literature-centeredness, stipulates general provisions covering all branches of art in a separate chapter.

Introductory provisions cover the scope of the act and contain fundamental rules of exercising copyright. The provisions encompass the scope of object, territory of enforcement of statutory protection, other fundamental statutory provisions to be applied in the scope of object as well as determination of the person entitled to exercise copyrights and clarify the content of copyright.

The act protects results developed in literature, science and arts. Specifying these results as works of creation, on the one hand, highlights the fact that the result protected by law has been developed by some kind of activity peculiar even in the scope of intellectual work, and, on the other hand, refers to the fact that the result has become perceptible in some form. Legal protection does not distinguish works in terms of quality: it is social use that provides grounds

131 Petrik 1990. 257. ff.

132 Petrik 1990. 266. ff.

for legal protection. The act refers to the efficient moral and financial support that our state provides for institutions which further authors' creative work.
Beyond the scope of works as set out above, however, the act extends the limits of its protection to so-called neighbouring rights.[133] It is in this scope that the act protects artistic performance of performers who present a considerable part of author's works to society and products of intellectual work close to creation (figures, technical drawings, maps, visual aids, etc.). However, for practical reasons, it was necessary to remove the results of intellectual works made during any administration activity (for example, rules of law, resolutions, rules of procedure, announcements, standards, files, submissions, etc.) from the scope of protection of the act.
Social impact of authors' works is not restricted to the territory of one country; therefore, attention had to be paid to international relations too. The scope of the act extends primarily to works made public on the territory of Hungary; the act deviates from this territorial principle in the event that a work which is made public first abroad is the work of a Hungarian citizen or protection of a foreign author's work published abroad is provided by international treaty or reciprocity.
Copyright law must refer back to the force of general civil law and labour law rules in each case when the act does not intend to enforce any special copyright rule. So, for example, in specific contracts on use of an author's work special protection rules must be enforced; at the same time the rules on contracts stipulated in general in the Civil Code, not affected by the special provisions of copyright law, must be applied too. Furthermore, special regulation is required for copyrighted use of works created under employment relation; if, however, an author maintaining employment relation, for example, refuses to make such a work, then general labour law consequences must be applied in accordance with the rules of the Labour Code rather than copyright law.[134]
The act connects author's rights with the creative work of the author who creates the work. If the work has been made as a result of creative work, the author will be entitled to copyright protection even if he has possibly used another author's work for his work. Accordingly, copyright protection will be provided for adaptation or translation of other persons' works if thereby the author creates a work that carries signs of creative work. Also, on the grounds of the above, copyright protection cannot be provided, for example, for rough translation of texts.
It often occurs that a work presents to us the result of several authors' creative work; regarding these cases the act gives guidance on how to exercise copyright. A uniform whole developed by joint work in which co-authors' work efforts are not and cannot be separated can be joint work of several authors. In this case, as a matter of fact, co-authors can dispose over the work only jointly and not independently of each other; they can challenge only violation of copyright independently.[135] Also, the case arises when there are several authors of a work but the parts of the work created by specific authors can be separated, without injury to the work. Exercise of copyrights must be provided for such co-authors independently of each other.[136] Collected works is again a different case. For example, publication of selected short stories to present 20th century short stories is collected works, where specific short stories are works independent of each other, yet they come to constitute a single work as a result of editing, selecting and arranging. So, it is justified that the act should provide the

133 Petrik 1990. 19. f.
134 Petrik 1990. 75. ff.
135 Petrik 1990 31. f.
136 Petrik 1990 32.

editor with copyright for the entire body of such collected works, while it should not restrict independent copyright of the authors of specific works.[137]
Sometimes, the author of the work does not intend to indicate his name or uses another name. Also for these cases the act must determine the person who is entitled to exercise copyright.[138] For lack of knowledge of the identity of the author, this can be the person who has made the work public for the first time. The act regulates the case of unknown authors paying regard to the new provisions of the Berne Convention revised in 1967 in Stockholm. This provision makes it possible for authors' interest representation organisations to provide copyright protection for folk art works from unknown authors, in line with the author's probable citizenship. Section 7 gives a concise definition of copyrights, specifying two branches of author's rights: the author's moral rights and the author's economic rights.
Act LXXVI of 1999 determines intellectual performances both positively and negatively. The main objective of the act is to protect literary, scientific and artistic works; furthermore, the act extends to protection of performances of performers, producers of phonograms, radio and television organisations and filmmakers. These performances are related to use of author's works; therefore, the term of neighbouring rights (related rights) was introduced as the name of rights arising from their protection. However, the act—contrary to our formerly effective law—would not provide protection belonging to a separate category (so-called neighbouring rights protection) for results of other activities related to author's creative work. If they meet the requirement of originality, as a matter of fact, works deserving copyright protection can be created (and are created) in these forms of expression too.[139]
The act sustains the basic principles of the formerly effective law.[140] The act—similarly to our formerly effective law—uses the phrases 'creation' and 'work' as synonyms; both denote the object of copyright protection. Copyright classification is independent of classification of intellectual performances according to other branches of law, and does not affect enforcement of other rules of law regarding use of the work. That is why, for example, tax law classification can be separated from the copyright classification of the work, and it follows form this that provision of some architectural work with copyright protection does not affect applicability of rules regarding construction administration.[141]
The act enumerates works to be covered by protection, main types of works only as examples, mainly the genres that can be considered traditional based on our formerly effective law, and those regulated by peculiar rules of a special level by the act. Basically, these types of works are mentioned in international treaties and foreign legislations in the lists given as examples on objects of protection. During preparation of the bill, several lawmakers urged that the lists of types of work given as examples should be supplemented; these initiatives, however, seemed less well-founded because the enumeration in the act is not exhaustive; in accordance with the general rule these intellectual performances can be provided with copyright protection too if they are of an individual, original character. On the other hand, the act does not set special rules with respect to these types of works anyway, and some of them can be ranked among one of the categories set out in the act.[142] With regard to software, general rules applicable also to literary works govern, together with special rules set forth in chapter VI of the act to protect software. So, the act meets requirements of both international and Union legal harmonisation by not making protection subject to meeting any other conditions beyond having an individual, original character with regard to software either. With respect to

137 Petrik 1990 32 f.; 175. f.
138 Petrik 1990 34. f.
139 Gyertyánfy 2006. 28.
140 BH 1980/332.
141 Gyertyánfy 2006. 29.
142 Gyertyánfy 2006. 30. f.

computer programs, there is only one criterion of originality: whether it is the author's own intellectual product.
Due to termination of neighbouring rights protection it is necessary to make it clear that photographic works and map works and other cartographic works are also covered by copyright protection.[143]
It follows form the general principle of the permissibility of the so-called parallel protection that an author's work can be simultaneously ranked among some industrial right protection category.
The provisions of the act circumscribe the object of copyright protection from the negative side: with interpreting character they declare that certain intellectual performances cannot be ranked among author's works, and they exclude intellectual products, which could otherwise meet the criteria of copyright protection, from protection.
The new regulation expresses that the objects of copyright protection cannot be ideas, principles, concepts, procedures, operation methods or mathematical operations.
The act discontinues the approach that in a rather abortive way attempted to cover works of folk art and folklore with copyright protection as anonymous works. The standard text makes it clear that expressions of folklore are not provided with copyright protection, among others due to unidentifiability of the subject of copyright. This, as a matter of fact, does not imply that the act would exclude protection of folk art inspired works with individual, original character; authors of such works continue to be entitled to copyright protection.
Today, use of author's works is not limited to the territory of a single country. Works of literature, art and science usually cross borders of countries; copyright legal relations traditionally involve foreign elements, whose weight, significance increasingly grow as international relations widen and deepen.[144]
Copyright is characterised by territoriality, in other words, its scope is restricted to the territory of the state that provides protection. The author does not, cannot have uniform copyrights extending to the entire world, protection of his work is the sum total of the rights provided by specific national laws, and these rights might differ from country to country. These rights are merely supplemented by the minimum rights provided through the unified substantive law rules of in international treaties, and they are restricted—with exceptional character—by the rules of comparing the terms of protection.[145] On applicability of rules of specific national legal systems to foreigners, special rules can be found practically in each legal system, they are the so-called alien rights provisions *(Fremdenrecht).* Section 2 of the act sets forth these rules with regard to copyright protection. The personal and territorial scope of the act is adjusted to formerly effective regulation.
To the question which national law governs the protection that a foreign author or other foreign copyright owner is entitled to, the answer is: as a state of facts containing a foreign element is concerned—in accordance with Law Decree No. 13 of 1979 on international private law—it is the international private law of the country in which protection is applied for, i.e., on the territory of which the existence, protection and enforceability of copyright becomes questionable that will govern. However, contrary to the collision norm ordering application of *lex loci protectionis,* priority is given (paying regard also to the provisions set out in Section 2 of the Law Decree) to the rules of international agreements that cover judgement of copyright relations containing foreign elements.
The most important of them is Article 5 of the Berne Convention, whose paragraphs (1) and (2) demands countries of the Union to provide national treatment to each other's citizens, i.e., to treat them as nationals. With respect to works protected by the Convention authors will

143 Gyertyánfy 2006. 36. f.
144 Gyertyánfy 2006. 38. f.
145 Gyertyánfy 2006. 37. f.

enjoy the rights in each country of the Union—except for the country of origin of the work—that relevant statutes provide for nationals at present and in the future as well as the rights that the Convention separately provides (so-called minimum rights). Enjoyment and exercise of such rights cannot be made subject to any required formalities and is independent of whether the work is covered by protection in its country of origin. This international treaty requirement of national treatment fills both Section 2 Act III of 1969 and the provision with identical numbering of the act with content.

In addition to the Berne Convention, the requirement of national treatment is contained, among others, in the Universal Copyright Convention (UCC) and the American-Hungarian bilateral agreement on protection of intellectual products. WIPO's Copyright Treaty refers to the provisions on national treatment of the Berne Convention: in accordance with its Article 3, the provisions set forth in Articles 2-6 of the Berne Convention—consequently applying to national treatment too—must be applied *mutatis mutandis* to the protection provided by the Treaty[146]. Article 3 of the TRIPS Agreement also demands national treatment provided that the Berne Convention or the Rome Convention does not allow any exception or reservation. Article 4 of the TRIPS Agreement demands, in addition to national treatment, provision of the most-favoured-nation treatment in the field of intellectual property.

Copyright belongs to the scope of private law, the Hungarian Civil Code (Ptk.) is the mother legislation of copyright law and both Act III of 1969 and the act create a general regulation background for it.

However, contrary to formerly effective regulation, the act dispenses with reference to the Labour Code. The reason for that is double: first, labour law regulation can have significance almost exclusively for works created in employment relation or other similar legal relation (so, in the application of Section 30 of the act); in other words, the Labour Code is far from maintaining a relation with copyright act as the Civil Code does; secondly, as a consequence of Section 30 paragraph (7) of the act, with respect to works created under employment relation or other similar legal relation not only the Labour Code but other statutes, which regulate types of legal relations concerned, can play a part.

The act does not change the basic principle that the original copyright owner can be only the natural person (author) who creates the work. Also, it is a rule preserved from formerly effective law that adaptation, translation of another author's work will be also covered by copyright protection if it has an individual, original character. Protection provided for such works, however, cannot and must not involve violation of the rights the author of the original work is entitled to.

The act—paying regard to problems, interpretation difficulties in legal practice—corrects regulation concerning original works of joint authorship; it differentiates joint works in terms of whether their parts can be used independently. Separability of parts is a prerequisite for usability; therefore, the act does not specifically refer to this criterion. Connected works concern connection of independent parts usually belonging to various types of works, for example, prose and musical parts, by mutual resolution resulting in a new quality. Such works can be various: first, they can be produced by setting an already existing work in a new work created by joint decision; secondly, they can be produced by creating parts of the work jointly, paying regard to each other. For this latter group it would be inequitable if the author could connect his own part from the already successful joint work without his co-author's consent with another author's work.[147]

Recent waves of technical development has made modern copyright law codification in several countries introduce the category of collective, jointly created work and and regulate it at variance from the general. This kind of work is characterised by the fact that authors

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146 Szalai 1922. 16 f.; 34 ff.

147 Gyertyánfy 2006. 46. ff.

cooperate in creating the work, whose contributions are united in the so produced uniform work that it is not possible to determine rights of specific authors separately. It is also characteristic of these works that their creation is initiated and controlled by an external person or organisation. For such works it is justified that the copyright owner should be the organisation or person that has initiated and controlled creation of the work and after that made the completed work public in his/its own name. This could be attained by the law classifying the said person or organisation the original subject of copyrights from the first, but it seems to be more appropriate that copyright should devolve on the strength of the law, and should belong to the person or organisation in question as the legal successor of the author.[148]
Also, in its text the act confirms the currently prevailing approach—paying regard to Directive 9/96/EC on the legal protection of databases—that protection can be given to compilations as collected works whose parts are not covered by copyright protection and are not considered works either. On the other hand, it makes it clear that copyright protection is conditional upon the content of the data store being individually, originally selected or arranged, edited; in other words, selection and arrangement of the elements of the data store should be the result of intellectual creative work. Similarly, it is reasonable to confirm in rule of law that copyright protection applying to data stores as collected works does not extend to the data, information that constitute their content.
The act does not change the provisions of the formerly effective law that in connection with works made public without any name or under adopted name copyrights will be exercised until the author reveals his identity by the person who made the work public for the first time.[149]
During preparation of the bill, a part of our theoretical jurists and several of interest protection organisations of authors supported the monist concept, i.e., the approach that interprets copyright as an inseparable unit of moral and economic rights. On the other hand, several copyright experts and numerous interest protection organisations of users and neighbouring rights holders seemed to be the adherent of the dualist approach, urging introduction of alienability of author's economic rights. The new regulation reflects the compromise that has developed as a result of these disputes; it seems to be indispensable to review it.
The act—by drafting Section 9 paragraph (1)—makes it clear that the author is entitled to the sum total of various rights inseparable from each other in relation to the work. Following the structure of the formerly effective act and internationally accepted division it ranks these rights into two groups: it distinguishes between moral and economic rights, the author is entitled to the sum total of these rights in accordance with the act. This means that the new regulation no longer considers copyright a uniform right that would appear as a combination of moral and economic partial rights inseparable from each other from the first. The act sets out from the same general rule that moral rights cannot be alienated, this rule ([Section 9 paragraph (3)], however, is now not more than statutory prohibition serving the author's interest protection claims. This rule prohibits something that would be otherwise possible both in concept and practice. So, the act does not presume that moral rights and economic rights the author is entitled to are necessarily inseparable from each other and that for this reason transferability of the latter is excluded from the first. This is proved absolutely convincingly by the fact that the act allows several exceptions to the general prohibitive rule, important in practical aspects.
It should be noted that in accordance with Section 55 of the act provisions regarding use contracts must be applied properly to contracts on transfer of author's economic rights, and

148 Gyertyánfy 2006. 53. ff.
149 Gyertyánfy 2006. 59. f.

that within the scope of neighbouring rights protection—in the absence of statutory prohibition—economic rights can be transferred.[150]

VI. 1. 2. Regulation of moral rights

The object of transfer can be only economic rights to sell, use the work. On the other hand, even in the case of unlimited transfer of copyright, the rights that are inseparably related to the author's person will stay with the author; specifically the right of the author that only he can make any changes in his work (including the title of the work) and that changes can be carried out by other persons only with the author's permit. As the author's important inherent rights are meant to protect his moral interests regarding the work, internationally such rights of the author are known as *droit moral*. The author's moral rights cannot be asserted after the term of protection has passed, that is, over fifty years from the death of the author; after that works of lasting value are sufficiently protected by the public against changes injuring the memory of the author.

Section 3 of Act XVI of 1884 prohibits that in case of transfer of copyright the author should make any changes in his work that infringes the lawful interest of the person to whom he transfers his copyright. However, the act does not contain any provisions that the person who has obtained copyright shall not carry out any changes infringing the author's lawful interest without the author's consent that do not fall within the term of adaptation, reworking, etc. The Royal Curia considered it permissible to make changes even in the absence of the author's consent of which it could be presumed that the author would not refuse to give his consent to. Under such restrictions, proper sale of copyright should be made possible for the person who has obtained copyright; especially for plays it should be considered permissible for the person who has obtained the right of performance to carry out changes in the play even without the author's consent in order to make it successful, which obviously does not injure the author. Although moral rights do not constitute the object of transfer, the author is not barred from making agreements stating that he authorises the person to whom he has transferred his copyright to act against anybody who makes unauthorised changes in the work.[151]

It might occur that the person indicated on the work is not the author of the work. In this respect the decision of the Royal Curia governs.[152]

In accordance with the act, in the absence of transfer between living persons, after the death of the author copyright will belong primarily to the person to whom the author has transferred it by measures in case of his death; in the absence of such measures, copyright will devolve to his lawful inheritors. If copyright so devolves to several persons, then in accordance with the nature of the matter the rules on co-authors whose parts are inseparable will be applied to them.[153] If the author dies without any inheritors, the State does not have right of inheritance according to the law; by termination of the copyright the work becomes free. It is obvious, however, that the rights belonging to the author that he has transferred to other persons will continue to hold during the term of protection even after his death. If one of the co-authors dies without any inheritor, then his part will not become free; instead, his copyright will devolve to the rest of co-authors or their legal successors.[154]

Section 11 stipulates how long protection is ensured against infringement of copyright, according to the main rule. The aim of protection is that the author and his legal successors (inheritors, the inheritors of his assignment) should enjoy the fruits of the work accomplished

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150 Gyertyánfy 2006. 288. f.
151 Kenedi 1908. 53. ff.
152 P.I. 5201/1928. sz.
153 Knorr 1890. 20. f.
154 Kenedi 1908. 57.

by him because during this term of protection copyright holds on specific works; consequently, they are protected against reproduction. The general term of protection determined in this section extends to as yet unpublished works, to lectures, recitations and readings held for the purposes of education and entertainment as well as to all works already made public if they have been published under the author's real name.[155]

The author's name should be indicated on the title page or in the dedication but maximum after the preface. It is very important because if the name is indicated on any other part of the work, then the term of protection will be set according to the rule on works published without the author's name; so, it will be shorter. If a work is published in several volumes and the first volume is published without the author's name, then this edition will be covered by the term of protection applying to works published without the author's name even if the next volume is published with the author's name.[156]

If a work is published in several editions, the term of protection might change depending on whether any changes have been made in the work between the editions. Unchanged editions in general and editions published with changes if they are published during the author's life will not influence the term of protection, the general rule will remain in force; and it makes no difference when the new edition is published because each edition is covered by protection of the same content. If, however, the changed edition is published after the author's death, this will establish a new term of protection, which depends on whether the change, adaptation, enlargement has been made by the author or a third party, and whether the new edition—in case it was issued by the author—has been published during the term of protection passing for the benefit of inheritors or after its termination. If the changes have been carried out by the author, and the changed work was published after the author's death during the term of protection passing for the benefit of inheritors, then the term of protection will be fifty years from the death of the author. If, alternatively, the changes have been made by a third party, new copyright will arise on these changes, which, however, applies to the changes only and not to other content of the work, so they will be covered by the formerly established shorter term of protection. This is important because thereby it can be reproduced by anybody once the term of protection on the original content of the work has expired.

Section 12 of Act XVI of 1884 discussed in the above paragraphs regulates term of protection of works made by several authors and divides them into three groups. In this case co-authors should be considered a single person with regard to the work, who will be considered a living person until at least one of the authors is alive, that is, the term of protection of the work commences from the date it is created and will last for fifty years after the death of the surviving author.[157]

Collected works also belongs here, and again can be classified into three groups. The first group is made up by collected works where specific authors' contributions are organically interrelated, constituting an integral whole. Regarding this integral whole the editor will be covered by protection identical with the protection provided for the author, so the term of protection will cover the lifetime of the editor and will extend to fifty years after his death. The same rule applies to collected works not published yet and collected works edited from documents and contributions not covered by the protection of law.[158] Again this rule should be applied to the collection of telegrams and reports collected for being published in newspapers or published in duplicated form because adopting them in another work without authorisation is considered infringement of copyright by the law; subsequently, it provides

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155 Knorr 1890. 64. f.
156 Knorr 1890. 70. f.
157 Knorr 1890. 67. ff.
158 Kenedi 1908. 112.

such collector with protection identical with the protection provided for the author, that is, the general rules govern with regard to him too.[159]
The second group contains collected works that are made up of several authors' contributions separated from each other, covering separate subjects, which are bound together externally and compiled by an editor without making any connection between them. Such compilations as an integral whole are not provided with protection, only each contribution independently. In calculation of the term of protection, in both cases attention should be paid to whether the names of the authors of contributions have been indicated. If they have, general rules will govern; if they have not, there are again two options: if the author's name is included subsequently, the general rule will govern, if it is not, then the work will be protected for fifty years from the first edition only.[160]
Finally, a separate group is constituted by articles, newsitems published in newspapers, periodicals that cannot be considered literary or scientific papers, and larger articles, newsitems at the beginning of which prohibition of reprint has been expressed, because regarding them Section 9 of the act states that they are not covered by protection, that is, determination of term of protection is out of question. The law protects such collected works for fifty years from the death of the orator, and, as orators are regarded identically as authors, it is clear that their work will be protected against infringement of copyright during their lifetime too. [161]
Section 13 expounds exactly how long the term of protection will be depending on whether the name of the author or authors is indicated on the work or not. Again, three options can be specified. The act binds the longest term of protection to meeting the condition that the author's real—or acknowledged literary name—should be indicated on a defined part of the work. The act does not give an exact definition of literary name but it can be deduced that names whose bearer is generally known can be considered acknowledged. Such acknowledgement is, however, relative, and we cannot speak about it in case of an author of a "first work". For such works the act accepts the solution that the authors' names are indicated at the end of contributions. A work is published under pseudonym when the work is published not under the author's real name but some other name.
The first edition, publication, marketing of the work is considered first publication. No matter what name is indicated on the work, the term of protection must be calculated from that date. The act does not stipulate what happens if the work does not contain the date of the first publication, however, this becomes clear from the objective of the regulation since the lawmaker's intention was—by demanding indication of the date of publication for works written under pseudonym or without any name—that the author should have right of action in case of infringement of copyright without the need to disclose his name. If the author has satisfied this condition (has indicated the date), then expiry of the term of protection should be proved by the person who claims such expiry. If the author has not indicated the date of publication, then it is he who has to prove that the term of protection set forth in law has not expired yet. The third case is when the author does not indicate the date of publication, but notifies his real name for being registered, because then expiry of term of protection must be proved again by the person who claims it.[162]
It is by all means true that the date of the first publication of the work is the real date when the work is actually published since it is usual to print the number of the next year on books that come out in the last month of the year. As a matter of fact, here again the fact that the book

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159 Knorr 1890. 68. f.
160 Knorr 1890. 68; Kenedi 1908. 112.sk.
161 Kenedi 1908. 112.
162 Knorr 1890. 71. f.

was published in the previous year must be proved by the person who claims it because until it is proved, presumption will be bound to the printed date. [163]
The term of protection of works so published will attain the longest duration (set according to the general rule) only in the event that the author notifies his name for being registered. Registration will not be substituted by making the author's name public in any other form, not even by the fact that later the author publishes his same book under his own name because this new edition can enjoy the longer term of protection but the term of protection of the earlier edition without any name will continue to be shorter.
Section 14 regulates term of protection of works published after the death of the author. A work published after the death of the author is a work completed during the author's life but published only after his death. A work made jointly by several authors one of whom was still alive when the work was published cannot be considered a work published after the death of the author. Term of protection of works published after death of the author can be determined in two forms. The general case is that term of protection lasts for fifty years from death of the author. If, for example, a work is published thirty years after the death of the author, the term of protection regarding him will last for another twenty years. Term of protection will extend only in the event that the work is published after forty-five years but within fifty years from the death of the author, because in this case it will be provided with five years' protection. Consequently, when the work is published in the forty-ninth year from the death of the author, then the five years will be calculated from that time. The aim of this rule is to enable the legal successors of the author to remedy their default regarding publication but they should not be given any larger, longer allowance. However, a work published after the death of the author will be covered by protection only in the event that it is actually published during fifty years from death of the author.
Section 15 determines term of protection of specific works published by the legal persons defined in them. In Section 10 it has been already set out that although only a natural person can be the author of a writer's work, certain legal persons can nevertheless also have derivative copyright and therefore legal protection regarding writer's works published by them. Legal persons defined in this section will be provided with legal protection if they can be considered equal to the author. Section 2 stipulates when they can be considered equal: a work consisting of the literary contributions of several persons shall be considered an integral work; therefore, the editor will be judged identically as the author, i.e., will be provided with legal protection. Consequently, the act protects legal persons and public institutions as editors. It follows form this that only collected works that can be considered an integral whole may be covered by protection.[164]
As a matter of fact, legal persons can publish other kinds of works too, but this provision does not apply to their term of protection. On the one hand, they are writer's works where contributions are not connected with each other in content and do not constitute an integral whole. Regarding these works specific contributions are protected depending on whether the names of their authors have been indicated or not; on the other hand, legal persons can publish writer's works created by a single author and covering an integral subject. [165]
Section 16 sets the term of protection of works published in several volumes or parts, paying regard to the case when specific editions are connected with each other in content. This provision sets a rule only on works published under pseudonym or without a name, or works published by academies, universities, bodies, other legal persons and public institutions because only for these works is it necessary to calculate term of protection from the first

[163] Kenedi 1908. 113.
[164] Knorr 1890. 75. f.
[165] Kenedi 1908. 113. f.

publication. Regarding other works it is not fundamental when the first volume was published or how much time has passed between publication of the volumes. [166]
So, in accordance with this section, term of protection of works published in several volumes or parts will commence from the first publication of each volume or part. This implements the basic principle that each volume and each part must be considered a separate writer's work; therefore, term of protection must be determined for them separately. For works published in several volumes or parts which are connected with each other, protection commences from publication of the last volume or part. It is always the quality, content of the writer's work that determines when various volumes, parts are connected with each other. It does not influence determination of this connection whether the several volumes or parts are published under one title or several titles. The act ensures that the term of protection of works so published should not be too long, pursuant to this rule; for this reason, it additionally stipulates that whenever a period longer than three years passes between publication of specific volumes or parts, then both those published earlier and those coming out after three years will be considered separate works.
Section 17 determines the period of prohibition of translation. The act stipulates protection of a short period for these translations because society's intellectual interest would be impaired if publication of a work in Hungarian or its adaptation in Hungarian adjusted to the needs and conditions of the Hungarian public depended on the author's consent due to a long term of protection. To ensure that these translations should be covered by five years' protection, as a matter of fact, requires satisfaction of the conditions referred to above: publication of the translation should commence within one year and should be completed within three years from publication of the original work; for theatre plays this should be completed within six months; and in both cases commencement and completion of the translation should be notified for being registered. For translations, each volume, part of the original work is considered an independent work, and five years' protection will commence from the first publication of each volume or part of the authorised translation.[167]
Finally, Section 18 formulates the rule of calculating term of protection. Except for theatre plays, any other case will be governed by this rule of the act drafted for expediency**.** Often there might be doubts as to exactly on what date a work or translation was published or what day the author died; for this reason, the year in which the event took place should not be included in the duration of the term of protection. This rule cannot be applied to plays because concerning them only six months from publication are available for completion of translation; so, in this case it is the day of publication that counts. Civil law gives guidance on calculating the commencement and termination of term of protection. Accordingly, when the deadline is determined in years, as it is done in Section 18, then the year of commencement is the year that follows the year of publication of the work or translation or the author's death. The final date of translation of plays falls on the day of the sixth month which is numerically equal to the day of publication of the original work. If this day is missing from the sixth month, then the final date will fall on the last day of the sixth month.[168]
In cases when it depends on the copyright owner's determined act bound to time whether term of protection commences indeed, i.e., his legal claim is established by his own act, it will be the copyright owner's burden to prove that the term of protection still lasts. The burden of proof will turn round in case of the general term of protection; so, it will not bind the copyright owner, because in this case the deadline will start from the death of the author, or, the surviving author, in case of several authors, and this fact must be proved by the person who claims it. If he can prove it, or if death is a fact of public knowledge, then again it will be

166 Kenedi 1908. 114. f.
167 Knorr 1890. 80. f.; Kenedi 1908. 115. ff.
168 Kenedi 1908. 118.

the copyright owner's burden to prove that the fifty years have not passed yet. If the author's death is uncertain, the author's death must be proved by the person who wants to assert rights from this fact. So, if somebody wants to duplicate a work, he will be obliged to prove that the author has been dead for more than fifty years. If the author's death cannot be evidenced by public deed, then it must be proved by court and the date of death must be determined on the grounds of testimonies. If the author has disappeared, then the day determined by court during the presumption of death proceedings must be considered the day of death with respect to the duration of term of protection. In doing so the court must take three rules into account. If eighty years have passed from birth of the disappeared author and his place of residence has been unknown for ten years, then it is the day following it, or, without paying regard to his date of birth, if the author's place of residence has been unknown for thirty years already, then it is the day following it, finally, if the author has suffered serious injury in war or has been otherwise shipwrecked or has been in mortal danger, then it is the day following mortal danger that will be considered the day of death of the disappeared author. Presumption of death, however, does not exclude demonstration of the fact that the disappeared author died earlier or later than that day or that he is still alive.[169]

Act LIV of 1921 stipulates the general rule that the protection that the act provides for the author will cover the author's entire lifetime and fifty years from his death.[170] The author can expect to receive higher valuable consideration from publishers, if the publisher is entitled to the right of exclusive publication for a longer duration even after the death of the author, which, of course, will terminate upon expiry of the term of protection. This term of protection will extend to all author's rights regarding works under protection, including the right of making public by radio. Photographic works are exceptions to fifty years' term of protection; furthermore, motion picture works that are photographic works assembled without any grouping in terms of their content will be regarded identically as the above.[171] In this case term of protection is regulated by Section 75 of the act[172]. Act LIV of 1921 does not contain a separate term of protection with respect to right of translation; so, the duration of the term of translation will be governed also by these provisions.[173]

With regard to term of protection of works made by co-authors jointly the act applies the former regulation. Protection of fifty years after the death of the author will be provided for collection of speeches only in the event that it was published in the author's lifetime or the latest ten years after his death. If the collected edition of the speeches was not published maximum ten years after the death of the orator, then their collected edition will become free.[174]

A work can be published with the author's real name, under pseudonym or without indicating his name (anonymously).[175] An author's well-known writer's or artist name, of which at least professional circles know which author uses them, will be regarded as the real name[176]. According to the ruling of the Royal Curia, it is prohibited to use a name as pseudonym that is identical with the name of a living person or when use of the pseudonym allows to draw the erroneous conclusion in certain circles of the public that the work comes from an author whose name is identical with the pseudonym. According to the above-mentioned ruling of the Royal Curia, it is forbidden to use a name identical with the name of any dead author as

169 Knorr 1890. 81. ff.
170 Szalai 1922a 17. f.; Szalai 1922b 18.
171 Alföldy 1936. 82. ff.; Szalai 1922a 17. f.
172 Szalai 1922b 45.
173 Alföldy 1936. 83. Szalai 1922a 45; Szalai 1922b 16.
174 Alföldy 1936. 84.
175 Szalai 1922a 23.
176 Szalai 1922b 19.

pseudonym if use of such name is suitable for arising the belief in the public that the author of the work is the writer known under such name. It is allowed to use the name of a dead writer as pseudonym who has been obviously forgotten by the public, and the name of a long time dead and currently well-known writer can be used as pseudonym if such use of name is not suitable for misleading the public. Works published under pseudonym or without indicating the author's name will be protected for fifty years from the first publication.[177]

The author will always have the right to have his work published subsequently with his real or well-known name indicated on it, thereby he attains that protection should extend to fifty years from his death; furthermore, he can achieve this goal by notifying his name within fifty years from the first publication to the Patents Court for being registered.[178]

Academies, universities, educational institutions, bodies and other legal persons will be considered the author of a work if no individual author is named on the work published in an edition under their name[179]. The regulation here is again identical with the rules of Act XVI of 1884.

In accordance with Section 16 of the act for works published in several volumes or parts duration of the term of protection must be calculated from the first publication of each volume or part if the date of publication governs in terms of determining the term of protection. This will be the case when the work was published under pseudonym or without indicating the author's name on the work and when the work was published by an academy, university or other legal person without naming any individual author. Contrary to works published under the author's name or his well-known writer's (artist) name, the term of protection will always commence from the death of the author, even if the works have been published in items.[180]

Term of protection will be calculated from publication of each volume or part when the volumes or parts do not discuss the same closed material and they are maximum loosely connected with each other. If, on the contrary, the volumes or parts discuss the same material connected with each other, then the term of protection must be calculated from publication of the last volume or part, unless more then ten years have passed between publication of specific volumes or parts[181].

When making Act III of 1969 the lawmaker paid regard to the fact that the copyright act of 1921 had been criticised because it did not distinguish between moral rights and economic rights. Judicial practice has developed the rule that even in case of transfer of copyright the author will continue to have the right to claim authorship and to protest against any changes in his work injurious to him. By then jurisprudence had clarified that relations connected with intellectual works are fundamentally not relations under property law. This view is reflected in the legislative practice of countries at the time, which almost without exception emphatically provides protection for moral rights, separated from economic rights, both during the lifetime and after the death of the author.

Among moral rights the first and perhaps the most significant issue is to decide if the author considers his work suitable, ready for being used by society, and if in view of that he consents to making his work public. In this rule social, appreciation of the will of creative man is manifested, and this rule is only strengthened by the provision that before making it public, it is forbidden to inform the public on any material content of the work either without the author's consent.[182]

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177 Alföldy 1936. 85; Szalai 1922b 19.
178 Alföldy 1936. 85.
179 Szalai 1922b 19. f.
180 Alföldy 1936. 87.
181 Szalai 1922b 20.
182 Petrik 1990. 52. ff.;

The next right within moral rights is the author's right to indicate a name and its reversed form the right to omit name (anonymity). Accordingly, the author can publish his work without indicating any name or under pseudonym and everybody will be obliged to respect this decision. The right to name demands indication of the author's name not only on the work itself but on each and every occasion when his work is presented, quoted, described. In this case the designation of the name is adjusted to the form of presentation, description, use (for example, in the programme in concerts, on the playbill in theatre performances, in the programme in radio broadcasts, etc.) The right of anonymity has a peculiar case: exclusion of indication of name in connection with works produced in employment relation, which is discussed in details by Section 14. The author's right to name includes the claim that he can demand that his such right should not be doubted by anybody. As a matter of fact, only the real author of the work will be entitled to this right.

Protection of the work against changes, distortions is solved in various legal systems basically in a similar way but fairly diversely in terms of regulation. One of the solutions intends to bind any changes in the author's work to the author's permit, the other solution prohibits merely changes expressly injurious to the author. The act sets out from the consideration that any unauthorised use of and changes in the work itself violates the author's moral rights. The act determines the cases of lawful uses and changes, and considers any and all uses and changes outside this scope unlawful.[183]

Several copyright acts define the right of withdrawal, the core of which is that the author can for good cause (changing his artistic approach, modifying his earlier views, etc.) withdraw his permit already given to making the work public, or can prohibit the otherwise lawful further use of his work. This right quite properly expresses that the relation between the author and his work will not break off by making the work public.[184] However, to avoid that this right could not be exercised abusively, the act requires not only existence of good cause but stipulates that the author should compensate for any damage arising until the date of making the statement.[185] In case of disputes, the decision of the court governs both with respect to good cause and claim for compensation binding the author, which is suitable for taking mutual interests into account.[186] This right cannot be applied to works produced in employment relation, however, here again the author will have the right, arising from his right to name, to demand omission of his name from a work no longer acknowledged as his won. Owing to the nature of the thing, it is the author who is entitled to exercise moral rights during his lifetime; however, they will be worthy of protection after the death of the author too. Lawmakers of various countries usually recognised that it was society's responsibility to esnure this protection based on the underlying theoretical postulate of appreciation of creative work and preservation of social, cultural treasures. Carrying through this principle in practice shows differences in several respects. Certain legal systems entrust exclusively social organisations to fulfil this social responsibility; others allow to a lower or higher extent the author's descendants to have a say. The act, by pointing out that moral rights are inalienable and unlimited in time, chooses the following solution: during the term of protection of economic rights these rights should be exercised by those who have obtained also the economic entitlements of the author's rights by virtue of right of inheritance, and after that interest representation organisations can take action to protect the rights most important for society.[187] In the event that the author has entrusted a determined person or organisation to care for his scientific or artistic estate, then during the fifty years' term of protection it will be

183 Petrik 1990. 44. f.
184 Petrik 1990. 55.
185 Petrik 1990. 56.
186 Petrik 1990. 56.
187 Petrik 1990. 40.

the person or organisation so entrusted and not the inheritors who can take action to protect the rights.

Act LXXVI of 1999 regulates moral rights by building on the formerly effective Act III of 1969 and introducing new elements. The act does not fundamentally change the nature of the author's moral rights: the author's work gives rise to personal civic rights, which create a legal relation with absolute structure and negative content. Personal rights as set out in the Civil Code must be respected by everybody, they are protected by law. Regarding the author's moral rights, this protection is added up by the special rules of the copyright act and the general rules of the Civil Code; nevertheless, the moral rights that the author is entitled to concerning the intellectual property must be differentiated from the personal rights that anybody is entitled to without any intellectual property. The provisions regarding the author's moral rights set out in the copyright act do not exclude and do not affect application of the general rules on personal rights set out in the Civil Code. Accordingly, for example, the provisions set forth in Section 75 (3) of the Civil Code apply also to the author's moral rights: moral rights will not be violated by the conduct to which the copyright owner has consented to, on condition that giving such consent does not infringe or endanger social interest. Any contract or unilateral statement otherwise restricting moral rights are null and void.[188]

The author's inherent rights are inseparable from the author's person: they shall not devolve, be transferred to any other person; these rights shall not be validly waived; this is confirmed by Section 9 paragraph (2) of the act. Only economic rights can be the object of transfer, devolution or waiver, which, however, does not affect moral rights. The author's moral and economic rights can part, that is why the act does not sustain the rule of the formerly effective act that describes unauthorised use of the work as a conduct violating the author's moral rights too.[189]

It is a general civil law principle that personal rights can be asserted personally only. Section 85 (3) of the Civil Code provides for assertion of personal rights only in case of injuring the memory and reputation of a dead person, which is contrary to public interest too. Breaking through these general civil law principles, the formerly effective act provides for assertion of moral rights after the term of protection and for unlimitedness of moral rights in time.[190] The act chooses a solution closer to practice and general civil law principles, more strictly following the tendency of international development of law: the author's moral rights will be covered by protection also within the term of protection regulated in Section 31. After the death of the author, moral rights related to intellectual works can be exercised within the term of protection by the person whom the author has entrusted with caring for his literary, scientific or artistic estate. If there is no such person, or if he does not take actions properly, the person who obtains the author's economic rights by virtue of inheriting can exercise moral rights too. So, within term of protection these rules exclude application of the provisions set out in Section 85 (3) of the Civil Code pertaining to the author's moral rights related to the work, regulated by law. These latter rules, however, can be applied once the term of protection of copyrights has expired. Nevertheless, if the conduct in question might infringe the author's right to indicate a name within the term of protection—in addition to those authorised to do so in Section 85 (3) of the Civil Code—the collective rights management organisation or author's interest representation organisation concerned can also take action, after termination of the term of protection, by virtue of injuring the memory of the author. This provision guarantees that—no matter how much time has passed—the author's name

188 Gyertyánfy 2006. 61. f.
189 Gyertyánfy 2006. 66.
190 Gyertyánfy 2006. 60. ff.

should be always indicated on his work.[191] In accordance with the act, the author will be entitled to moral rights named in the former acts, the right to the integrity of the work.
The act also contains rules at special level on moral rights and their exercise. It contains provisions as set out below: on moral rights of owners of neighbouring rights Section 75, Section 79 and Section 81.
Finally, it should be noted that certain opinions in legal literature count freedom of scientific and artistic works ensured by Section 70/G. of the Constitution also among personal rights.[192]
Taking the formerly effective law as its basis, the act regulates the right to make the work public, raising specific rules set out in the present implementing decree to statutory level. The right to make the work public actually means the authorisation of the author to decide: whether he discloses his work to the public or keeps it secret. In the latter case, the right that holds on the grounds of copyright can be supplemented by the protection of privacy ensured by Section 81 of the Civil Code.
The option to use the work is related to making it public. Making the work public itself—except for the cases of free use (Sections 33–41)—does not create the possibility of use, and in case of works not made public free use cannot be considered at all: in accordance with Section 33 (1) only works made public can be used freely, in adherence to other provisions of the act.[193]
To perform a use contract, the author must authorise making his work public; if he refuses to do so, he will be in breach of contract; however, his statement cannot be substituted on the grounds of the above. Furthermore, the act sets up a reversible presumption that in accordance with the use contract the author consents to informing the public on the content of the work adjusted to the goal of use. On the other hand, in accordance with the provisions set forth in Section 30 (5) the author's consent must be considered given on the strength of the law when making the work is the author's obligation arising from his employment relation: delivery of the work is considered consent to making it public.[194] Finally, reversible presumption supports that a work found after the author's death was meant by the author to be made public. It is possible to prove the contrary when the author during his lifetime or his legal successor later on makes a statement of exclusion on forbidding to make the work public.[195]
For works of unknown authors, the first publication of the work will determine commencement of the term of protection as a general rule, and the term of protection of works made jointly must be in each case calculated from the publication of the work. Also, there are legal effects related to failure to make the work public and publication of works not made public yet. Making the work public can be carried out upon the author's unilateral order; similarly, the author can withdraw his work unilaterally. Obviously, the author can withdraw his permit to make his work public only until the work has not been made public, after that, the author can prohibit further use only, in which case the work must be considered—from the date of the statement on withdrawal or a later date set out therein—as if it had not been made public. This legal effect might prevent the completion of the use contract, at the same time it excludes acts falling within the scope of free use in relation to the work, paying regard to the provisions set forth in Section 33 (1). Permitting publication of the work is not subject to any required formalities, however, claim to protect obtained rights makes exercise of the right of withdrawal subject to required formalities: withdrawal will be considered valid solely in writing with a good cause specified therein, which is to be defined more precisely in practice,

191 Gyertyánfy 2006. 60. ff.
192 Gyertyánfy 2006. 62. f.
193 Gyertyánfy 2006. 193. ff.
194 Gyertyánfy 2006. 178. ff.
195 Gyertyánfy 2006. 193. ff.

where—paying regard to the unchanging nature of the term—it will be possible in the future to draw on experience of legal cases of the past.[196]
Withdrawal and barring is the unilateral right of the author, however, by exercising this right he shall not violate rights and lawful interests of others; so, he shall be obliged to compensate the user for any damage arising from withdrawing the permit or prohibiting further use, which obligation covers merely losses arising until communication of the statement. Dogmatically, however, this is actually not compensation for damage but indemnification. Exercise of the right of withdrawal (barring) authorises the author to cancel use contracts too. The terms and consequences of exercising this right of cancellation are regulated by Section 53 of the act. Exercise of the right of withdrawal (barring) shall not restrict entitlement to economic rights different from the author's right in enjoying and exercising these rights.
It is a new element in the regulation of indication of name that the act sets practical requirements to be met in asserting this right, paying regard mainly to conditions of modern forms of use: the author can exercise the right to indicate his name in line with the character of use. For works made in employment relation the relation between the right to indicate name and employer's right is regulated in Section 30 (5) of the act.[197]
In harmony with the provisions set forth in Section 6 (1) of the Berne Convention, nobody may doubt that the author can establish his claim to the authorship of the work. Authorship depends only on satisfaction of the requirement on the merits defined in Section 4 (1), its acknowledgement has no required formalities, it is not bound to registration or other similar authority acts. The act returns to the rule set out in Section 6 of the Berne Convention; so, it classifies merely distortion or mutilation of the work or any other change in the work that might be injurious to the author's honour or reputation infringement of rights.

VI. 1. 3. Regulation of economic rights

The property right character of copyright raises the question how the author's creditor can claim his satisfaction from the writer's work that constitutes part of the author's property and whether the creditor can compel the author through foreclosure to publish his work for the purpose of financial benefiting. In view of the fact that during publication of writer's works, in addition to financial benefiting, other aspects are asserted, it is the author's sole right to decide on publication; if, however, this has taken place, the financial benefit arising therefrom could be seized in accordance with Act XVI of 1884.[198] Also, copyright can be seized when the author or his inheritors have already transferred it to another person; also, during foreclosure against the publisher of the writer's work the copyright obtained by the publisher can be seized; what is more, in spite of the publisher's will a second edition can be carried out by the bailiff on condition that he has obtained copyright during the court proceedings; or in accordance with these rules, the author's bankruptcy creditors can divide the economic value of copyright in accordance with bankruptcy law.
The author's intellectual activity becomes embodied in the created work, so it falls within the scope of the term thing in the sense of private law; therefore, it is the object of the right of ownership. The act regulates acquisition of works of the fine arts and applied arts as well as works regarded identically as them and works of photography stating that copyright shall not be considered transferred through the author giving his such work into another person's ownership.[199]

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196 Gyertyánfy 2006. 78. ff.
197 Gyertyánfy 2006. 81. ff.
198 Knorr 1890. 21. ff.
199 Knorr 1890. 63. ff.

Regarding writer's and musical works, the act states that even the possessor of the manuscript or its reproduced copy will be entitled to duplication solely with the author's consent. Obviously, in everyday life the issue has significance in case of transfer of ownership of paintings, statues and other similar works of applied arts or photography, where the original of the work is the subject of purchase and sale. In this respect the act can be interpreted to the extent that even if the work in question is a work not made public yet, the author—in the absence of any stipulation to the contrary—has not reserved the right to make the work assigned into ownership public from among the rights set forth in copyright; in other words, the owner must be considered authorised by the author to make public and publish the work got into his ownership. For the person who acquires the ownership of the painting, statue from the author will be entitled to transfer, alienate it owing to his right of ownership without the need to ask for the author's consent thereto. It follows from the above that this person can display the painting, statue in his ownership for the purpose of sale, can enter them to public auction unless he has been expressly barred by the author from doing so. Also, such person must obtain the author's consent to duplication of the work already given into his ownership, to marketing the copies produced.[200] In accordance with the act, for the author the object of foreclosure can be solely the pecuniary advantage that the author is entitled to as a result of his having sold or asserted the copyright. Furthermore, the amount of damages payable to the author through enforcement of infringement claim will be also pecuniary benefit that can be subjected to foreclosure. These provisions are applicable both to writer's works and other works as well as public performances of theatre plays, musical plays and musical works as appropriate.[201] If the author offers the created painting, statue for sale, thereby he makes his work public, in this case nothing will prevent such copies from being made subject to foreclosure or auction. Against the author, for the benefit of the person to whom he has transferred his copyright, delivery of the original copy held by him can be forced in order to sell the work, after foreclosure, only in the event that transfer of copyright was meant to apply to the fully completed work. If anybody acquires ownership of any copy of a work not made public yet, then during the foreclosure conducted against him such copy can be made subject to auction because it follows from transfer of ownership that the author has not reserved the right to publish, make public the work assigned as property.[202]

In Act III of 1969, the author's economic rights and the restrictions of copyright jointly determine economic relations with respect to use of the work.

It is a common feature of economic rights the author is entitled to that valuable consideration, fee will be provided for the author for the use of the work that makes it available to the members of society.[203] Determination of the forms of social use that provide grounds for claim for such fee can be made either by listing such forms item by item or by a proper general definition. The act chooses the latter form, and in addition to the general definition of use, it determines the restrictions of copyright by an enumerating method, i.e., the cases when it will be entitled to so-called free use without any fee to the author. Also, it is the advantage of general determination that the provisions of the act can be applied to cases where technological development discloses new forms of use, therefore, the act states the principle in general that in the absence of any provisions of the act to the contrary any use of the work requires the consent of the author (or his legal successor after his death), and such use will be carried out against a fee, except for the cases set out in the act. The act connects the rule of

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200 Knorr 1890. 63. ff.
201 Knorr 1890. 21. ff.; Kenedi 1908. 58. f.
202 Knorr 1890. 21. ff.; Kenedi 1908. 58. f.
203 Petrik 1990. 64.

protection of the title with this group of questions, because the title itself is not a work; however, if it has an independent character, its use requires the author's consent.[204]
Owing to technological development, enhanced public transport and entertainment needs and possibilities, community aspects of creative work considered typically individual earlier have come to the front. It becomes frequent that works covered by copyright protection are made under employment relation. The act reckons with these conditions changed as a result of social development when it regulates the issues related to works created under employment relation. The act sets out from the principle that individual creative work manifests itself even under changed conditions and it must be protected. On the other hand, it should be taken into account that this work is made possible and facilitated by organisations to ensure social use of the result of the work. Simultaneous satisfaction of these two conditions requires suitable equalisation of the creator's and the employer's interests.[205]
On the one hand, the employer acquires right of use on works created under employment relation, but this right is restricted by two elements. One of them is the content of employment relation: primarily this is what determines whether the author was obliged to create, for what purpose and what work. The other one is the employer's scope of operation: the employer does not acquire right of disposal over any use of the work that is outside the employer's scope of activity.[206] Secondly, the author has right of use outside the employer's scope of activity, however, in exercising this right the author is obliged to take the employer's lawful interests into consideration. To ensure this, the act stipulates that the employer's consent is required for exercising the author's right of disposal, which the employer can refuse to give solely with good cause. Thirdly, the rules that restrict exercise of the right of use in time will prevail with respect to works made in employment relation too. If the work is further used after the period determined in rule of law, the right of disposal will belong to the author. This ensures that he should get the statutory author's fee on the new edition, in addition to the salary received in employment relation. Also, the author will dispose over his work if during such determined period the employer does not exercise its right of use at all.
The provisions regarding use of works made in employment relation do not affect the author's moral rights, so the author will be entitled to the right to claim authorship, the right to indicate name and protection against unauthorised use or distortion. Restricting conditions related to the use of the work arise from labour law commitments; within the employer organisation the author's work can be changed by the competent superior even if the author does not agree with it; in this case, however, the author can claim omission of the indication of the name.[207]
Here it should be added that in accordance with Section 11 a person under employment relation will not have the right of withdrawal either since this would thwart use of the work made in employment relation. With respect to such works the right of making them public will be asserted through the author consenting to making the work public by delivery of his work; if the author refuses to deliver the work deemed unsuitable, his act will be considered breach of employment relation, which brings about labour law consequences.
It is a peculiar feature of copyright that during a determined period after the death of the author the author's legal successors will dispose over the use of the work, and in return for their consent they will enjoy the author's fees received. In accordance with Act LIV of 1921, the duration of the term of protection following the death of the author is fifty years, which complies with generally accepted international practice. Although the fifty years' term of protection will in certain cases bring about that inheritors far from the dead author will receive

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204 Petrik 1990. 65.
205 Petrik 1990. 76. ff.
206 Petrik 1990. 80.
207 Petrik 1990. 55. f.

author's fees, the act—in harmony with Act LIV of 1921—sustains this fifty years' term of protection.

Our old copyright law determined the author's economic rights for specific genres, and determined the state of facts of usurpation by naming specific economic rights applying to all genres. Section 13 (1) of the formerly effective Act III of 1969 provides for the author's economic rights in the form of a so-called general clause: any use of the work requires the author's consent, in the absence of any provisions in the act to the contrary; and use means the process that communicates the work or a part of it to the public. Our copyright law translates this general right to particularly defined titles concerning specific genres, building on experience and terms of former legal practice.

Our formerly effective law determines these economic rights partly for use of works in material form, partly for use implemented in non-material form. This regulation technique, on the one hand, made it possible to circumscribe author's economic rights with relative security, and, on the other hand, through the general clause it remained sufficiently flexible to enable legal practice to follow technological development as well as economic and social changes.

The general clause supplemented by a list of cases as examples will continue to be needed, however, the general clause of our formerly effective law needs to be revised. Although acts of use are usually built on each other gradually, this does not change the fact that even the very first use will be subject to licence and fees; and the process does not by all means need to be fully carried out. Furthermore, reference to the public in the formerly effective clause is a disputable element. Regarding works that can be performed, played, copied, copyrighted use can be implemented within the private sphere too; what is more, today this kind of use is becoming typical. The significance of personal enjoyment, use of works without any mediators is growing; the dividing line between the private and the public is becoming indistinct. In the future, copyright law cannot focus merely on public use of works carried out in the cultural market. The new term of use should extend to this use of works for private purposes en masse; furthermore, the term of public should be revised. Finally, it should be noted that, albeit, it would have been expedient to replace the phrase 'use' by another phrase, in order to maintain continuity of legal practice the act preserves the present terminology.

Act III of 1969 determines the author's economic rights in general as right to authorise use**.** However, it is reasonable that the general clause of the new regulation should take a logical step backwards, and deduce it from the author's exclusive right to utilise the work that any other person shall utilise the work solely with his authorisation.[208]

General rules on economic rights indicate that the two basic types of use are use in material form and use in non-material form. The typical cases of use in material form are reproduction, distribution and exhibition, while forms of use in non-material form are public performance, communication to the public and retransmission and adaptation.[209]

In judicial practice there are several precedents of the new element in regulation that in the future the author will be entitled to exclusive right of commercial utilisation of the characteristic and original shape contained in the work and giving licence to such utilisation.[210]

The act sets the author's claim for a fee, which is in proportion to the income related to use, within a general scope, with a principle edge. The term of income related to use is wider than the term of income arising from use; it extends, for example, to sponsoring and other support received for use. Loss-making of use will not consume the author's claim for fee.[211]

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208 Petrik 1990. 85.
209 Petrik 1990. 90. ff.
210 Petrik 1990. 69. f.
211 Petrik 1990. 82. ff.

The act regulates the peculiar case of the general obligation of information, set out in Section 277 (3) of the Civil Code, adjusted to use of author's works: the user is obliged to provide information on the form and extent of use.
The listed forms of use are typical in practice, and fit in with the system of terms used in international treaties, European Community guidelines and modern foreign legislations.[212]
The powers, scope of specific economic rights are specified jointly by the rules of this chapter of the act and provisions regarding free use. As the right of exhibition can apply only to determined types of works from the first, this form of use and the economic rights related thereto are regulated by Chapter X.
As it is expedient to extend the right of reproduction of the work and the right to give licence thereto by widening the term of reproduction, the regulation should express that recording of the work and making a single copy will be also reproduction, whatever purpose it is made for. It is reasonable to change the former narrower term, focusing on producing physical copies of works so that it should embrace any and all recordings that make the work directly or indirectly perceptible. Regarding works of architecture, implementation, reconstruction of the work should be considered reproduction. Duplication should contain fixation of works in sound and visual recording. Paying regard to growing significance of computer programs, data stores and distribution of works through computer networks, by the new regulation it should be made unambiguously clear that temporary electronic storing and producing of works transmitted over computer networks in a material form will be considered reproduction too.
Concerning reproduction, it was justified to sustain the rule stipulating joint management of so-called mechanical small rights, which is based on Article 13 of the Berne Convention. The extension of the scope of the rule logically comes from the content of Section 18 of the act. The formulation of the rule stipulating mandatory collective rights management follows the example of the German and Austrian statutes, the provision setting the exception from that maintains harmony with Article 14 paragraph (3) of the Berne Convention.[213]
Paying regard to copying for private purposes it was necessary to introduce further economic rights.
By now, photocopying of works distributed in printed form and duplicating them in other similar forms have attained such volumes and have become so widespread that claim for fee by virtue of copying for private purposes must be extended to works distributed in printed form. The basis of this reprography royalty is the price of reprographic equipment and their accessories. Special rules apply to businesses that provide photocopying services for valuable consideration. The act does not extend the obligation to pay reprographic fee to institutions that otherwise carry out photocopying in large volumes, thereby avoiding unfavourable budget and other effects.
Furthermore, Section 35 of Act LXXVI of 1999 makes it clear that copying specific works and certain cases of making copies continue to be subject to the author's licence; asserting, collecting and allocating all the royalties payable on them is the task of a collective rights management organisation.
Only at certain points does the formerly effective regulation provide expressly for the distribution of the copies of the work and the right to authorise distribution. Elsewhere, Act III of 1969 and the decrees related to it define marketing of copies of works and the rights related to it. Within the scope of neighbouring rights it stipulates exclusive right on marketing phonograms. The term publication/edition can be separated relatively clearly from the term distribution and marketing: according to prevailing approach publication/edition shall be interpreted as producing or causing to produce the work by any procedure suitable for that, at

[212] Petrik 1990. 85.
[213] Petrik 1990. 96.

one time or at times directly following each other, in several, determined number of copies, for the purpose of distribution for the public. It is not quite clear whether the fact that distribution (marketing) depends on the author's special consent makes distribution (marketing) an act of use separate from or being a part of publication/edition. The new regulation interprets peculiar issues of publication of books and sheet music as a uniform process containing acts of use of recording, reproduction and distribution (marketing) and provides for them within the scope of special rules of use contracts.[214]

The act names distribution as form of use and establishes exclusive right for the benefit of the author to license distribution of the work and its duplicated copies, regarding each type of work. Distribution shall be making the original copy and reproduced copies (duplicated copies) of the work available to the public as right of distribution applies to specific preparatory acts too.

The act generally acknowledges lending right. Right of distribution through leasing does not apply to buildings and works of applied arts; however, the right to lend designs will anyway continue to hold. Lending right can be transferred and can devolve. Regarding films, the directive connects presumption of transfer of this right with the film contract [Section 66 (1) of the act attaches similar legal effect to film contracts]. In connection with that the act stipulates that the author's claim for equitable remuneration will continue to hold after transfer of the leasing right to the film or phonogram producer.

Remuneration can be demanded from the film or phonogram producer, through collective rights management; the author cannot waive it.

Article 5 of Directive 92/100/EEC allows relatively extensive and large restriction of lending right. Exclusive right can be reduced to claim for fee, but authors should by all means receive fee at least on public lending and rental and works set in phonograms, film works and computer programs; however, certain institutions can be exempted from payment of the fee.

The act fills this elbowroom of regulation by subtle legal classification of rental. Regarding works listed in Section 23 (3) it acknowledges exclusive right; rental of any other work will give rise to claim for fee only, which can be enforced solely through collective rights management. Section 39 allows exception to both rules for the benefit of libraries operated as public collections, which can freely lend copies of the work to the public; this exception, however, does not apply to software and data stores operated by information technology tools.

In terms of legal harmonisation, it is reasonable that the new regulation should provide for exhaustion of this right, in connection with right of distribution. It follows form our bilateral agreement entered into with the United States of America that our copyright law should reject the international right exhaustion principle. Paying regard to all the above, the act specifically provides for right exhaustion: if the copy of the work has been marketed by the author or, with his express consent, by another person through purchase and sale or transfer of ownership otherwise, inland, thereafter right of distribution cannot be exercised, except for rental and lending right and importing right.

If right of distribution extended only to marketing implemented through sale or transfer of ownership under other title, there would be no need to declare that exhaustion of distribution right does not affect the rental and lending right on copies of the work, however, the act stipulates provisions right to the contrary. So, it is necessary to state that rental and lending right will continue to hold after exhaustion of distribution right.[215]

After accession to the European Union these provisions shall extend to marketing on the entire territory of the Community.

As the act attaches right exhaustion effect to marketing inland, it seems to be obvious too that marketing abroad does not exhaust exclusive right of marketing in Hungary; which involves

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214 Gyertyánfy 2006. 136. ff.

215 Gyertyánfy 2006. 138. f.; 140.

that the author will be entitled to exclusive right to import the copy of the work into the country. However, paying regard to our bilateral agreement entered into with the United States of America, it is reasonable to make it clear that distribution right contains importing right.[216]

Performance of the work is one of the basic types of use. The work becomes perceptible in such form that its physical copies are not delivered to the audience even temporarily for this purpose. Public performance, use in non-material form typically takes place in the joint presence of the user (service provider) and the person who finds pleasure in the work, while in the other basic case of use in non-material form, in communication of the work to the public, the relation is indirect, the work becomes perceptible to persons not present.[217]

The act does not consider only traditional live performance a performance; instead, it states that performance is when the work is made perceptible by some technical means or method.

Reference to display on screens aims at modernisation: display can be implemented on a computer monitor just as on a television screen at a restaurant or other similar places.

Performance will be considered public when it is carried out at a place available to the public or at any place where persons outside the family and its company or acquaintances gather or can gather.

Historically, first it was common management of public performing rights that authors set up a company for; these rights cannot be exercised in any other form even today; their individual assertion against several thousands of users is practically ruled out. The act also stipulates collective rights management in this scope, relying on formerly effective law and certain foreign solutions. A peculiar form of making works of the fine arts perceptible to the persons present is exhibition, which is regulated in Section 69 of the act. WIPO's Copyright Treaty determines right of communication to the public generally, extending it to broadcasting. In accordance with Article 8 of the Treaty authors of literary and artistic works are entitled to exclusive right to authorise communication of their work to the public. This right will hold irrespective whether communication is carried out with or without wire. Consequently, this provision of the new agreement embraces communication, making available the work in any form to persons not present on the site and extends to all genres.[218]

The act basically follows this construction by regulating broadcasting as the basic case of communication to the public. Provisions regarding broadcasting mostly preserve the formerly effective law, which was modernised by Act VII of 1994 in harmony with the Council's Directive 93/83/EEC.

A new element in regulation of broadcasting is the settlement of issues related to encrypted transmissions**,** disputed in practice so far. It should be considered broadcasting and does not qualify as cable retransmission regulated in Section 28 (2) if the means of decrypting of the programme received encrypted from satellite and fed into the cable network is not for sale in trade, i.e., cannot be purchased by anybody, or if the programme received from satellite without encrypting is encrypted at the headstation of the cable network. The rules of broadcasting and cable distribution of own programmes shall be applied to these two cases too. Furthermore, it is a change that the act makes both recording enabling repeated broadcasting and recording for the first broadcasting subject to licence.[219]

The WIPO Copyright Treaty contains a phrase, basically, with the aim of giving an international law answer to *on demand* distribution of works implemented on computer networks. According to the Treaty, one of the cases of communication to the public is when the work is made available to the public in such a way that its members can access the work

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216 Gyertyánfy 2006. 140. f.
217 Gyertyánfy 2006. 143. f.
218 Gyertyánfy 2006. 148. f.
219 Gyertyánfy 2006. 166. ff.

from the place and at a time individually chosen by them. It should be added that this provision of the Treaty, actually, does not adjust the term of publicity to new technological development; instead, it makes it clear that communication of the work to the public will be implemented even if access to the work is provided for the public in such a way that its members can simultaneously decide on the time and place of transmission, retrieval. In compliance with all that the act regulates communication to the public both in general and with regard to this specific case.

Maintaining the status as set out in the formerly effective law, the act stipulates collective rights management for licensing the rest of forms of broadcasting and communication to the public.[220]

The act regulates two cases of retransmission. If retransmission is not simultaneous or is implemented by changes, Section 28 (1) will govern. If the work is retransmitted to the public simultaneously and without changes by involving an organisation other than the original broadcasting organisation, paragraph (2) will govern; in this case, the author's consent must be considered given if the fee determined in advance is paid to the collective rights management organisation. The act regulates this latter version of use basically by borrowing the formerly effective law, in harmony with Directive 93/83/EEC. Determination of allocation rates allowing a different agreement is a new element. The consultation procedure regulated in Sections 102–105 of the act can be used also in connection with the authors' retransmission right.[221]

At variance with Section 4 of Act III of 1969, Act LXXVI of 1999 must protect not only the work produced through adaptation but must provide economic rights for the author for the adaptation of his work, expressly binding it to his licence.[222]

Provisions regarding works made in employment relation must be applied, in accordance with the act, to works produced in public service and public servant relation too.

Outside the scope of the above-mentioned legal relations, the parties can dispose over the author's economic rights, taking other provisions of the act into account: agreement on economic rights related to works made under contract falls within the scope of research, principal and agent contracts, articles of association and other contracts.

In accordance with Article 3 paragraph (3) of Directive 91/250/EEC on legal protection of computer programmes, solely the employer should be authorised to exercise economic rights related to the program if it has been created by the employee in fulfilling his obligations or acting in accordance with the employer's instructions (however, the contract between the parties can set different provisions). Although this rule of the Directive applies to software only, it is expedient to follow this regulation logic in internal codification with respect to all genres, with the deviation that it is reasonable to exclude the employee's claim for copyright fee only in the event of software and data stores.

Acquisition of right by the employer can be made possible by various kinds of codification methods, from among them the act chooses devolution of right attached to the fact of delivery of the work, occurring on the strength of the law (however, it is possible to make a different agreement). Contrary to the rule set out in Section 14 (2) of Act III of 1969, the employer acquires economic rights for the entire duration of the term of protection, if however the employer gives permit to use to another person or transfers economic rights related to the work to another person, the author will be entitled to proper fee. Even devolution of economic rights to the employer wil not terminate the author's claim for fee that continues to hold after transfer of the right of use in accordance with the act.

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220 Gyertyánfy 2006. 146. ff.

221 Gyertyánfy 2006. 167. ff.

222 Gyertyánfy 2006. 172. ff.

With respect to term of protection, copyrights and related rights, Act III of 1969 basically complies with stipulations of international treaties and the rules of the European Community legislation, Directive 93/98/EEC harmonising the term of protection of copyright and certain related rights. Term of protection of moral rights is identical with that of economic rights, provisions on term of protection identically apply to these two kinds of copyrights.
Protection of works whose term of protection should be calculated not from the year of the death of the author will expire if the work is not made pubic within seventy years from the date of creating the work. In relation to this rule, it is expedient to stipulate that on works with expired term of protection not made public, protection ensuring rights in content identical with the author's economic rights will be enjoyed by the person who lawfully makes such work public or communicates such work to the public for the first time. The duration of this special protection is twenty-five years from the first day of the year following publication.[223]

VI. 1. 4. Restrictions of copyright

Copyright is exclusive; however, it can be exercised solely within the restrictions set out in rule of law, marking the dividing lines of its social function. To create an author's work, primarily a creative person's individual skills, artistic, literary, scientific vein, outstanding achievement over the average are required; however, the impact of social environment cannot be underestimated in making the work. Consequently, legal regulation needs to make efforts to guarantee not only the author's moral and economic interests but also to create opportunities for the possibly most extensive undisturbed social use of interesting works.[224]
The author's copyright powers are opposed to general cultural interests of society. It is the author's interest to have legal dominion over his work excluding everybody, and that he alone should determine the economic conditions of publication too; it is, however, the interest of society that intellectual goods should spread as fast and as easily as possible. Between these two opposing interests the statutory protection of the author's right arises from the consideration that a vivid intellectual product that meets the need of the public will be properly assured only in the event that the authors are also assured with respect to the expected economic benefits and moral advantages of their work.
Before independent acknowledgement of copyright, protection implied by conclusion of contracts and honesty tolerably assured author's rights against usurpation, especially plagiarism—even in the absence of statutory protection. The force of awareness of old customary law continued to prevail beside statutory law until the beginning of the 20th century, and shows itself both in the fact that also the public considers plagiarism unlawful and in several literary and publisher's customs that preserve the author's powers outside the law too in highly vivid circulation of thoughts.[225]
The source of restrictions lies not only in coarse public interest but also in the public knowledge that the author does not develop his own thoughts alone. Intellectually, he also draws on the treasures of thoughts of the past and the present, even if he has original thoughts and ideas. All the more if he presents the existing material of knowledge according to a new plan, in a new form and better adaptation to the public—great masses of literary and other artistic works are such. From these facts come the conclusion in harmony with public interest that society or the State can restrict the author's right as much as it is required and made possible by the need to ensure smooth development. [226]

223 Gyertyánfy 2006. 190. ff.
224 Knorr 1890. 64. ff.
225 Kenedi 1908. 23.
226 Kenedi 1908. 23. f.

Legislative restrictions of copyright apply basically and primarily to economic rights the author is entitled to, which does not mean that moral rights are unrestricted; they are also governed by general clauses of civil law that set forth the obligation of exercise of rights according to rules and the prohibition of abuse of rights. Certain restraints of moral rights can be observed regarding service works, in the restriction of right of notice linked to revoking consent given to use; and, as a matter of fact, the author himself can use the means of self-limitation, for example under a contractual agreement. In the widest, at the same time simplifying sense, the term of protection can mean restriction of the author's economic rights although it is more proper to consider it the limit of protection, and these restrictions prevail within this limit.[227]

In the state of development of the period, restrictions apply partly to the limits of copyright, partly to its duration. The former include especially when minor works serving the benefits of education and general education are made free, and charity performances are excluded from the scope of the concept of usurpation in certain cases, and it is allowed to quote from alien authors' works, include short extracts from poems in music. To determine the scope of all these is a secondary task, which sometimes involves quite a lot of practical difficulties. [228]

Restrictions in time include term of limitation of right of action and even more the general limitation of copyright itself for the benefit of society, which should be more properly called the extinction, amortisation of copyright. It is in it that the legal claim by which society lays claim to the authors' works is manifested the most definitely, which was not clearly expressed in the period of the theory of intellectual property.[229]

Legislations usually set the term of amortisation in 30-50 years from the death of the author.

Certain statutes set shorter term of limitation, i.e., extinction on certain works, so on translation of author's works.

All these and restrictions similar to them belong to the open questions of further development of copyright in science, just as eminent domain of the State regarding copyrighted works considered prominently important in terms of general education. Legislations preceding Act XVI of 1884 omitted eminent domain paying regard to the author's moral rights, or perhaps because the author's interest of benefiting sufficiently ensured spreading of such works; consequently, restriction did not appear to be necessary in this respect.[230]

Act III of 1969 contains the provisions that restrain assertion of author's rights in an effort to harmonise social and individual interests; a part of these restrictions are contained in Act LIV of 1921 too.[231] The rules as set out in Act LIV of 1921 are further developed by the act: it regulates restrictions of copyright in three groups (free use, use without the author's consent against fee and authorising use for social interest).[232] Restriction of author's rights can, as a matter of fact, apply in any case to works already made public.

Free use of author's works is the strongest restriction of the author's rights because such use is free of charges in the cases regulated in the act and does not require the author's consent.

The act ensures free use to quote a part of already published works faithfully or to adopt them for the purposes of school education and dissemination of scientific knowledge; in both cases, however, it is obligatory to indicate the source and the name of the author of the specified work.[233] This scope includes organised training of workers and vocational and political further training carried out at armed forces. It is a further case of free use of alien works when

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227 Knorr 1890. 64. ff.
228 Kenedi 1908. 24.
229 Kenedi 1908. 24. f.
230 Kenedi 1908. 25.
231 Szalai 1922a 20.
232 Petrik 1990. 90.
233 Petrik 1990. 90. f.; Szalai 1922b 16. f.

somebody produces a new, independent work through creative work by using a work already published. Thus, the rules of copyright law do not provide monopoly on some subject, copyright cannot exclude anybody from reworking the topic of a former work again. However, adaptation of an alien work to the stage, film, radio or television as well as in the same genre must be excluded from free use.[234]

Making a copy of a work made public also belongs to the scope of free use if the copy does not serve the aim of marketing or profit-making (so it is for private purposes) and otherwise does not injure the author's lawful interest. However, architectural works and technical facilities had to be taken out of the scope of the provision because making a copy of them basically means implementation of marketing and profit-making.[235]

It is within the frameworks of free use that the act facilitates operation of means of mass communication. Free use of facts and news primarily subject to passing of time and topical economic and political articles with the source indicated cannot be avoided by copyright regulations anywhere. Free use of articles is, as a matter of fact, restricted in case of reservation of right of making public (which is usually indicated when they are published). This provision has already prevailed in our copyright law in the field of the press; yet, it is reasonable to extend it to the radio and television. A special provision is required for presenting works of the fine arts and applied arts, etc. by the television on an ad hoc basis, as a set or scenery.[236]

The act makes it free to perform author's works for school purposes. Furthermore, it is considered free use to perform these works incidentally at private gatherings and mass demonstrations if use does not serve the aim of profit-making or increasing profit even indirectly, and participants do not receive any fee.

It is a further case of restricting author's rights when the work can be used without the author's consent but proper fee must be paid to the author of the work used. This solution is the case of the so-called implied licence when the author's license to use is substituted by statutory provision. This implied licence is granted by all new copyright regulations to broadcasting organisations. The act confines implied licence to unchanged broadcasting of works already made public, and binds broadcasting of public performances to the organising body's consent, barring the case when agreement between the author and the user excludes or restricts broadcast.[237]

Concerning broadcasting organisations' implied licence it was necessary to clarify their right to make sound or visual recordings of works that can be broadcast, for the purposes of their transmission, without the author's consent but against fee. On the other hand, this right of broadcasting organisations necessarily demands that their program compiled against a fee can be adopted by other broadcasting organisations only with their consent, and that they can be recorded with their consent for the purposes of marketing or public performance. These provisions, as a matter of fact, do not affect authors' claim for fee set according to relevant implementing decrees.

It is a peculiar case of restricting copyright when the author's legal successors should refuse without good cause to give their consent necessary for further use of a work already made public, it can be substituted by court decision based on its deliberation provided that otherwise it is not in conflict with international treaties. Free use, confining exclusive right to claim for fee, implied licence and—in a broad interpretation of the term—right exhaustion and obligatory collective rights management are kept in evidence within the restraints of copyright. The terminology of international treaties refers to exceptions to copyright law and

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234 Petrik 1990. 92. f.
235 Petrik 1990. 94. f.
236 Petrik 1990. 96.
237 Petrik 1990. 93. f.

restrictions of this right. This chapter of the act is basically aimed at regulation of the cases of free use.
It is a common feature of the cases of free use that they affect only economic rights and apply exclusively to works made public. The Berne Convention provides for the possibility to restrict the exclusive right of reproduction, stating that countries of the Union are entitled to making reproduction of works possible in special cases, on condition that such reproduction is not detrimental to normal use of the work and does not injure the author's lawful interests without cause.
Article 13 of the TRIPS Agreement, basically, extends the requirement set out in Section 9 (2) of the Berne Convention to all the cases of free use and the other restraints of copyright. It should be added, however, that the exceptions and restrictions allowed in the Berne Convention, if they are properly applied, are by no means detrimental to the normal use of the work and do not injure the lawful interests of copyright owners without cause. Therefore, under usual and normal circumstances there is no conflict between the Berne Convention and the TRIPS Agreement in the scope of issues of exceptions to economic rights and restrictions of economic rights.
A general opinion has been developed on Act III of 1969 that it complies with the provisions of the Berne Convention and the TRIPS Agreement also with respect to restrictions of economic rights, however, legal practice turned the attention to several anomalies which called for overall revision of the regulation in this field too. Basically, the measure of the examination is the system of criteria determined in Article 13 of the TRIPS Agreement. It was not justified to widen the scope of cases of free use, the definition set out in Section 16 of Act III of 1969 could survive and detailed rules of specific cases of such use needed modification.[238]
The act introduced a common rule for all cases of free use that defines general criteria of free use in compliance with the provisions set forth in the Berne Convention and the TRIPS Agreement. This provision—Section 33 (2)—based on the basic principle provisions of the Civil Code, makes it clear that exceptions to the author's economic rights can be permitted solely for use implemented within the limits of fair practice and only to the extent necessary for and in the form adjusted to achieving the goal served by making use free. These criteria are enforced as requirements in application of law; they can be referred to in connection with peculiar, special cases of free use regulated in other provisions of the act.[239] Section 33 of the act excludes extensive interpretation of the rules of free use.
Section 34 of the act does not change rules of quoting and adopting considerably. Although formerly effective law was from time to time criticised for not giving the exact definition of quoting and determination of its possible volume, yet, it would be hard to regulate this issue in more details than it is done in the present regulation.

VI. 1. 5. Contracts of use and transfer

Transferring copyright is an indisputable requirement of practical life, it was satisfied by Section 3 of Act XVI of 1884. Transfer of copyright can be called assignment entered into between living persons through contract, which assignment mediates passing of rights in all the cases where transfer is not carried out through giving into possession.
In transferring copyright it is possible to distinguish between the fact of assignment and the legal relation it is based on *(causa cessionis)*.[240] The fact of assignment is the fact that enables the acquirer to exercise exclusive right of reproduction for his own benefit. Regarding

238 Gyertyánfy 2006. 196. f.
239 Gyertyánfy 2006. 197.
240 Cf. Papp 2009. 133–143.

author's works that have been duplicated already, the fact of assignment can be summed up in manifestation of will to transfer copyright. The legal grounds for assignment is legal transaction or other legal relation that obliges the author to transfer in spite of his will, i.e., it is assignment by necessity. Anybody who makes author's works, documents in an alien matter will be obliged to transfer the intellectual property to the authoriser, if, however, the authoriser waives ownership of intellectual ideas, the author will not be prevented by anything from asserting copyright so obtained. Ordering an author's work usually does not establish the obligation to transfer copyright; however, the publisher's order does not provide grounds for assignment by necessity of copyright but it does not rule out that such legal relation between the publisher and the author can be regulated under publisher's contract. An exception to it is the case of engagement purely under employment relation where, for example, the publisher engages a translator against regular monthly salary. In such cases the publisher has acquired the exclusive right of reproduction on translations, however, not the original right but as a derivative copyright, and that through assignment by necessity.

Transfer of copyright under contract can be based on purchase and sale, gift or other legal transaction (but not on publisher's transaction), which is aimed at alienation of copyright. Concerning contracts on alienation of copyright the question can arise whether the objective of the contract of alienation has been transfer of the property or the right of reproduction. Copyright can be considered transferred through alienation of the manuscript when the intention of the contracting parties has been aimed at transfer of the right of reproduction. Otherwise, it can be presumed from delivery of the manuscript that delivery aims at transfer of the right of reproduction. Validity of transfer of copyright is not bound to written contract.[241]

Inheritability of copyright is accepted in every European regulation on this subject matter; on the other hand, it is an acknowledged principle that copyright cannot be considered purely family property, cannot devolve from generation to generation infinitely. The act does not contain any provisions different from existing rules regarding inheritors within the scope of inheritance as set out in copyright law. The act sets forth that copyright will devolve, it follows form this that the author's inheritors can pass this right to their inheritors, and in the event that the author has several inheritors, copyright will be divided in proportion to hereditary parts. Copyright can be bequeathed, in this case the legatee will acquire all titles arising from copyright.[242]

It arises as a question whether the publisher can sublicence its publisher's right without the author's approval. The act does not contain any provisions with regard to legal relations arising from publisher's contract between the author and the publisher; these legal relations have been regulated in the act on publisher's transactions.[243]

The act does not extend the right of devolution of the Saint Crown on derelict estates to copyrights for the sake of public interest as it is the country's interest that intellectual properties should spread as extensively as possible. This goal is ensured much more when they can be distributed and made public by everybody freely, and it cannot be the task of the State to make public and sell author's works found in estates.

When Act LIV of 1921 speaks about transfer of copyright,[244] this should be interpreted as economic rights on sale, utilisation, exploitation of the work. According to the act the author can transfer his copyright between living persons or for the case of his death; for lack of it copyright will devolve to his lawful inheritor(s).[245]

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241 Kenedi 1908. 55. f.
242 Knorr 1890. 17. ff.
243 Act XXXVII of 1875
244 Szalai 1922b 9.
245 Alföldy 1936. 24.

It can be restricted by stipulating that the author permits publication of the work only in a certain form, and it can apply to the content of the right the author is entitled to, a certain duration or a determined field. It depends on the author which right he intends to transfer to another person from among the rights to sell, market, duplicate, make public, transmit to mechanical equipment.[246]

In the event that the author has transferred his right without having expressly excluded devolution of any of the rights to sell the work, then the rights to sell the work will devolve to the person to whom the author has transferred his copyright only when the author has transferred his copyright expressly without any limitation, or has transferred expressly his all rights. If he has transferred his rights in general only, without having expressly excluded devolution of specific rights, then according to the circumstances of the given case it is allowed to interpret the contract so as that it has not aimed at transfer of certain titles.[247]

It is a frequently disputed question whether in case of transfer of author's rights without any conditions it is the author or the person to whom he has transferred his copyright that will be entitled to the rights to sell that had not existed yet when the transfer was carried out or of which the parties could not have even thought of. In the case of transfer of copyright and entering into publisher's transaction, usually it should be presumed that the will of the contracting parties have been aimed at transfer of only the titles that were known at that time to the contracting parties or that the opportunities of exploitation of such titles might have been before the eyes of the contracting parties at that time; consequently, the titles that the contracting parties could not have thought of, could not have reckoned with as an option when entering into the contract cannot be considered transferred rights unless the contracting parties' will contrary to the above can be deduced from the content of the contract or existing circumstances. Also, it should be decided on the grounds of rule of law whether it is the author or the person to whom he has transferred his right that is entitled to the right of recording on gramophone, transmission by radio, adaptation to film, adaptation to sound film.[248]

According to the legal standpoint of the Royal Curia, transfer of copyright is a sales transaction, where the valuable consideration payable to the author in return for transfer of copyright will be defined in view of the opportunities of sale available at the time of transfer. It would not be fair if pecuniary benefits arising from sales opportunities not foreseen at the time of transfer should be given to another party and not to the author. In transfer of copyright, transfer of the thing can be implemented only in the event that the person to whom the author has transferred his right without any limitations or with restrictions will acquire exclusive right to sell the transferred rights.[249] If as such the transfer, either in a restricted or not restricted form, is exclusive, then, in compliance with the transfer, the relevant copyrights will belong to the person who has acquired them exclusively; in other words, the latter will become the subject of the relevant copyrights**,** in this case his exclusive right acquired from the author will be of a law-of-thing nature, hence he will be entitled to bring an infringement action against anybody who usurps the copyrights that have been transferred to him; so, even against the author. If, however, the party contracting with the author does not acquire exclusive right to sell the work in a certain direction from the author, then transfer of copyright as transfer of the thing will not hold even within the frameworks of the permitted sale. In the absence of any stipulation to the contrary, the transfer must be considered exclusive, except when the parties' will to the contrary can be deduced from the circumstances of the case.

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246 Alföldy 1936. 25. ff.
247 Alföldy 1936. 25.
248 Alföldy 1936. 26. f.
249 Alföldy 1936. 27.

It occurs quite often that a famous writer, composer, artist contracts with a contractor his works to be created in the future, against fee to be paid annually or per item.[250]
The act, involving this issue in its scope of regulation, states the following. Copyright can be transferred also with respect to works to be created in the future, such contract can be cancelled by half year's notice if the transfer applies to the author's works to be created in the future in general or a determined type of his works to be created in the future in general. A contract entered into on transfer of specific works to be created in the future cannot be cancelled, and cancellation does not affect already created works. By allowing cancellation the act intends to make it possible for the party to be exempted from further scope of the contract through cancellation if the contract should put a heavy burden on him later on. Both of the parties are entitled to right of cancellation. To ensure that the party should not be able to exercise right of cancellation to the detriment of the other party's lawful interests shortly after entering into the contract of transfer, the act stipulates that cancellation can be exercised with legal effect only in the event that five years have already passed from conclusion of the contract. It is for the benefit of the author as the economically weaker party that the act provides that any agreement deviating from the above rules that is detrimental to the author will be void.[251]
Publisher's transactions belong to transactions aimed at transfer of copyright. Publisher's transactions are transactions by which somebody (the publisher) acquires exclusive right from the author or his legal successor to reproduce, make public and market literary, technical or artistic works either completed or to be created. Rules on publisher's transactions must be applied only to transactions entered into by entities who are professional publishers, or by traders within their business.[252]
The publisher's transaction will be subject to the rules set out in the Commercial Code only in the event that somebody both acquires the right and obliges itself to publish the work. Publisher's transactions also contain transfer of copyright with the restriction that the publisher will be granted the right to reproduce, make public and market the work solely in the volume determined in the contract, otherwise only within the limits of statutory provisions pertaining to publisher's transactions, for, in the absence of any agreement to the contrary, the right of translation will not devolve to the publisher.[253]
Section 522 of the Commercial Code stipulates with regard to the interpretation of publisher's transactions that in case of doubt the contract gives title only to a single publication of the work. In publisher's transactions transfer is usually restricted in time too when the publisher's transaction is confined to one or several editions. Upon termination of the scope of publisher's transaction the publisher's right will revert to the author anyway.[254] The publisher can sublicence the publisher's right (unless anything to the contrary arises from the content of the publisher's transaction) without the author's consent but will remain responsible to the author for completion of the publisher's transaction in conformity with contract. Actually, it is a transaction on commission rather than publisher's transaction that is entered into when the publisher publishes the work, in its own name but without having acquired the publisher's right as exclusive right, for the benefit or at the expense of the author.[255] It might occur that a publisher, believing that it can publish it, has already printed a work in proper number of copies or has sent it to the bookseller, and at this point another publisher brings an action against it, certifies an exclusive right, stronger and acquired earlier, and on these grounds

[250] Alföldy 1936. 29.
[251] Alföldy 1936. 29.
[252] Alföldy 1936. 29. f.
[253] Alföldy 1936. 30. f.
[254] Alföldy 1936. 31.
[255] Alföldy 1936. 31. f.

sequesters or causes to confiscate the inventory issued by the other publisher.[256] The requirement of good faith, which is the basis of dealings, demands that publishers engaged in publishing books as a business activity, even if they do not maintain business relations, should inform each other whether one of them holds any exclusive right to publish a work (translation) that will prevent the other publisher from publishing the work (translation); making a statement can be enforced by judgment too.[257]

If somebody makes a work for somebody else within the scope of his employment or activity based on service or contractor's agreement as fulfilment of the obligation assumed by him, then it should be decided according to the circumstances of the given case to what extent the copyright on the work will devolve even without special stipulation to the employer or the customer placing the order as a result of the contract concluded on providing such work. There is no general rule of law stating that, in the event that somebody is obliged to make and deliver a work covered by protection to his employer as a result of service or other similar contract, then, in the absence of any stipulation to the contrary, the copyright of the work should devolve to the employer as a result of the contract without any restrictions. The issue of devolution of copyright should be addressed always by taking the circumstances of the given case into account, by deciding for what purposes and for what kind of disposal the employer has been provided with the work, according to the stipulation set forth in the contract or the contracting parties' presumable will.[258]

When he transfers his copyright, the author will be usually materially interested in ensuring that the person who has acquired the rights to sell the work should indeed exercise such rights.[259]

Contractual relations affect the author's interest absolutely directly since legal regulation in force in this respect will get the author to receive valuable consideration for his work; in spite of that Act LIV of 1921 contained no rules at all on settlement of contractual issues, and left the contract to the parties' unlimited autonomy[260]. The very few provisions pertaining to copyright contracts were contained in the Commercial Code; for this reason, Act III of 1969 gives authorisation that in determined cases rule of law should permit conclusion of use contracts only with the assistance of organisations authorised to do so.

The principle of regulating contracts, also followed by our Civil Code, is permissivity. Dispositive, permissive rules, accordingly, give guidance to the parties, replace the contractual will where the parties have not stipulated any provisions, and in general they make it possible for the contracting parties to settle the terms of contract by agreement at variance with the rules of the act. This principle of civil law is enforced in copyright law with the restriction that the act does not allow any deviation to the detriment of the author from the rules that serve protection of the author's interest. Also, the provisions of the implementing decrees issued on the grounds of the act that expressly forbid deviations have binding force too; their most frequent case is determination of author's fees. Entering into force the above described rules is served by the provision of the act that states that in case of infringement of these rules the contract will remain in force but the unlawful stipulation will be replaced by the relevant provisions of the act. Use contracts must be made in writing, in accordance with general practice, only rule of law can provide exception to it in cases of less significance or occurring en masse.[261]

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256 Alföldy 1936. 32.
257 P.I. 8252/1930.
258 Alföldy 1936. 32. f.
259 Alföldy 1936. 33.
260 Szalai 1922b 10. f.
261 Petrik 1990. 112.

Based on practice of entering into contracts and experience obtained by judges in application of law, the act records some explanatory rules, which helps to explore the parties' contractual will. These rules take the side of the author in disputed cases. Accordingly, right of use will be exclusive only in case of special stipulation; the user shall not sublicence the acquired rights; sale of the copy of the work embodying the creation itself will not pass rights of use to the buyer; and the copy delivered for use will remain in the author's ownership.[262]

Use contracts frequently include contracts on works to be created in the future, and as a result of the nature of the thing, they offer more opportunities for disputes than use contracts that cover already completed works. In this respect the act regulates the order how it can be established whether the work made on the grounds of appointment is in conformity with the contract—it specifies the consequences of providing improper works.[263] It is the user's obligation to make a statement on acceptance of the work delivered under contract, in specific genres and branches of use; the implementing decree can set a proper deadline for it. The user will have the right to return a completed work with good cause to the author for correction. Reference to good cause means that the user cannot exercise this right abusively, and if he carries out correction of the work without cause he will be in breach of contract. On the other hand, if the author refuses correction without cause, he shall bear the consequences of breach of contract. Even with both parties' conduct in good faith, it might occur that the work after correction would continue to be unsuitable for use. In such cases the parties must bear risk of failure jointly, which is expressed by the rule that provides moderate fee for the author in this case.[264]

The rule on alterations indispensable or obviously necessary for use, not affecting the core of the work implies the parties' obligation to cooperate. To ensure use, the author is obliged to carry out such alterations, and if it is not possible, the user can also carry out the alterations.[265]

At this point the act regulates two kinds of use contracts, owing to their overall character and being widespread: publication contracts and broadcasting contracts; in addition to them, among provisions on specific genres, the act provides for stage performance contracts and film contracts. According to the rule determining publication contracts, the author is obliged to make the work available to the publisher and the publisher is obliged to pay the fee, against which it will the have the right to publish and market the work. In the absence of expressed contractual provision, the right of publication does not contain the right of translation; yet, it usually provides exclusivity for the content of the contract; works made for compilations, dailies and periodicals are exceptions to this rule.

The act sustains the very significant provision set out in rules of law on copyright after the Second World War that publication contracts shall cover a determined period or determined number of copies only. The act allows the option to make exceptions to the rule: practically, it occurs when the right to publish a foreign work in Hungary is acquired in accordance with international practice.

The publisher will have the right to publish the work but will not be bound by any obligation in this respect that can be legally enforced by law, if, however, the publisher fails to publish the work within a proper timeframe, the author will have the right to withdraw from the contract and claim reimbursement of his fee because the risk of failure not imputable to the author must be borne by the publisher.[266]

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262 Petrik 1990. 112. f.
263 Petrik 1990. 121. f.
264 Petrik 1990. 122. ff.
265 Petrik 1990. 124. f.
266 Petrik 1990. 145. ff.

A new named contract is broadcasting contract, where consequences of delayed use are identical with those under publication contracts.[267]

Maintenance of inalienability of the author's economic rights—implemented as a general rule—made it necessary for Act LXXVI of 1999 to liberalise rules of use contracts to a great extent.

Certain types of use contracts are regulated sporadically in Act III of 1969 and in a dozen of ministerial decrees. The effective copyright act sets all the rules of use contracts in a single statute. The act continues to name publication contracts and film contracts as separate contract types, and defines specific rules of contracts on use of software.[268] In addition to the above, it is not reasonable to introduce or maintain further contract types; this, however, will not rule out that provisions on specific work types should extend to contractual issues.[269]

In accordance with Section 205 of the Civil Code, execution of the contract requires the parties' agreement on material issue and issues classified as material by any of them. If the use contract is entered into under general contractual terms and conditions, the provisions on such terms and conditions of the Civil Code govern. Paying regard to these rules of the Civil Code, it does not seem to be reasonable that Act III of 1969 should provide separately for mandatory content elements of use contracts. It would not be expedient, and would be alien to our civil law, if the act contained mandatory content elements for lack of which the contract would be considered void; lack of agreement on material issues can prevent execution of the contract only. Instead, regulation should aim to help the parties to attain targeted legal effects; so, it is expedient to make such provisions that make it possible to enter into and maintain the contract even in lack of agreement on specific issues. It is especially true on specifying forms of use. Licence to use is confined to the form of use indispensable for implementing the objective of the contract if the forms of use it extends to are not expressly specified in the contract. Also, there is a need for explanatory rules to protect the author and make the user interested in clearly determining the terms and conditions of the contract; that is why the act stipulates that an interpretation more favourable to the author must be accepted when the content of the use contract cannot be clearly construed.[270]

The act defines the meaning of exclusive and non-exclusive licence. It stipulates that non-exclusive licence to use granted before entering into the contract granting exclusive licence to use will survive, except when the contract between the author and the user acquiring non-exclusive right to use expressly sets forth provisions to the contrary.[271]

One of the fundamental cases of terminating the contract is when the entitled person of the licence to use does not commence use of the work within the timeframe determined in the contract. Foreseeing this case it is expedient to give right of cancellation to the author, however, only in the event that the licence to use is exclusive. Also, right of cancellation can be given to the author in the event that the user exercises the rights granted by the exclusive licence to use in a form obviously unsuitable for implementing the objective of the contract or contrary to intended use. As regulation of use contracts is basically permissive, the author can stipulate right of cancellation in the above cases in contracts granting non-exclusive right to use too, or it is possible to attach legal consequences to failure to use or the user's improper exercise of rights also in contracts ensuring exclusive licence to use.[272]

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267 Petrik 1990. 162. f.
268 Gyertyánfy 2006. 292.
269 Gyertyánfy 2006. 236.
270 Gyertyánfy 2006. 223. ff.
271 Gyertyánfy 2006. 239. ff.
272 Gyertyánfy 2006. 272. ff.

VI. 2. Provisions regarding specific genres

VI. 2. 1. Literary works

Section 1 of Act XVI of 1884 resolutely states the principle that solely the author of writer's works shall have the right to reproduce, publish and market writer's works, infringement of this right will involve compensation for damage and culpability.

The subject of protection provided by the act is the author of the writer's work; yet, the question might arise who can be considered the author of writer's work. The act does not define it but it can be declared unambiguously that it is the person through whose intellectual activity the writer's work has been created that must be considered the author.[273] The object of protection is the writer's work, whose reproduction can result in law of property/property right benefits, and this is typically not the manuscript or the picture itself but the given form of appearance which is suitable for imitation or mechanical reproduction. Consequently, copyright is an absolute right without corporeal object; its content is constituted by the right of reproduction or imitation and by the fact that third parties can be excluded from exercising this right. The author's right to reproduce his work at his discretion arises from natural freedom and is not subject to acquiring any special right. The author can lose this title, but it is not copyright itself that disappears because it will terminate only after term of protection expires. Copyright is a property right, which is undoubtedly confirmed by Section 3 of the act. Property right significance of literary papers is different from their literary value, the act basically applies to law of property aspects; therefore, works with lower literary value will be provided with protection identical with the protection given to more valuable scientific works.[274]

Nor does the act determine what can be considered writer's work. It can be declared that the term of writer's work depends on joint satisfaction of the following two conditions: on the one hand, whether the work is the result of the author's own intellectual activity; on the other hand, that it should be a product that is suitable for literary circulation, publication. This latter condition definitely appears in the text of the act since by copyright the act means right of mechanical reproduction, i.e., the right by which the writer's work can be placed in literary circulation through printing or other activity; it follows from this that a work that is not suitable for this due to its nature cannot be the object of copyright.[275]

In general, a writer's work is all thoughts expressed in external physical features. In terms of the act, however, any and all intellectual products, i.e., literary papers, that cannot be considered a drama or is not connected with a musical work shall be writer's work: this shall include, as a matter of fact, literary genres recited in spoken language, which are ranked by the act to Section 6 (6).

Based on practice, papers without any literary value, lists, registers, compilations, business advertisements, circulars, playbills, copy-books, price lists, invitations, appeals, announcements meant for public distribution shall not be considered writer's works. Sent private letters are not protected against publication by Act LIV of 1921 either; the sender of the letter and secrecy of letters were protected by the provisions of the Criminal Code. The same holds good of the so-called letters that—if otherwise they cannot be considered writer's works—do not fall within the scope of protection of Act LIV of 1921. Abstracts from writer's works, if they appear in newspapers, and serve short description of regular scientific works, shall not be considered usurpation, except for abstracts of musical works.[276] Writer's works

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273 Knorr 1890. 6; Kenedi 1908. 46

274 Knorr 1890. 7.

275 Knorr 1890. 7.

276 Kenedi 1908. 42. f.; Knorr 1890. 8. f.

shall be always considered protected against adaptation, be it from one genre to another or within the same genre.
The act indicates the “scope of exclusive legal dominion” of the author of writer’s work over his work by the terms reproduction, publication and marketing, and in such form that these triple titles belong to the author both jointly and separately. In other words, the author’s powers will be infringed by the person who only reproduces his work without his consent, i.e., merely publishes or markets his work, printed either lawfully or unlawfully, without title to do so. By these three terms the act specifies solely the powers of the author of writer’s work, but this theoretical specification is not complete and cannot be considered a general statement that would specify the powers of the author of all copyrighted works.[277]
The ”scope of legal dominion” of the author of writer’s work extends not only to his written works but to his certain presentation, recitations and readings. He is also entitled to right of publication of certain public speeches, however, only with respect to collected editions, furthermore, to right of translation of his work into other languages, and the translator of the translated works will be entitled with respect to the translation to all the rights that the author is entitled to with respect to his work. However, the act does not protect works already made public against public performance, except for theatre plays and musical works.[278]
The author of musical works—apart from translation rights that cannot be applied here—in addition to the rights the author of writer’s works is entitled to, have exclusive rights to adapt, abridge and arrange his work and perform his work in public. The author of theatre plays, including musical plays, in addition to public performing rights on his work, has exclusive right of translation and adaptation. The author of works of the fine arts has exclusive right to remaking, making public and marketing. Technical works, on condition that they cannot be considered works of the fine arts owing to their function, will be provided in every respect by protection granted to literary works, or else by protection given to works of the fine arts. Regarding photos, the author of the original photograph has exclusive right to remake, make public and market his work.[279]
The author is the person whose intellectual activity creates the work; this applies both to writer’s and other copyrighted works. As the term author is exclusive in the act, the person who has entrusted the author to create a work can be by no means considered an author, not even if he has ordered the work from the author against fee or advance payment, or has contributed to the work by his design or advice.[280]
Those who participate in creating author’s works as ”contributors” at newspapers, periodicals under leadership of an editor do not have independent author’s legal status but are taken into account as independent authors with respect to the independent writer’s works or fine art works created by them. In the absence of any agreement to the contrary, contributors of newspapers or periodicals assign the independent copyrighted work created by them, as authors, to the company for making it public once, i.e. for a single publication, and their further rights regarding it will remain untouched.
Section 12 of Act LIV of 1921 speaks about co-authors when the same work is created by the intellectual activity of two or more persons aimed at one purpose. The circumstance that that the co-author’s name is not indicated on the work does not prevent the work at all from having several authors in terms of copyright law. In case the parts cannot be separated the act sets forth that each of the authors is authorised to reproduce, make public and market the work, however, subject to compensation to be given in advance, the amount of which will be determined by court at its discretion in disputes, but even in legal proceedings the authorised

277 Kenedi 1908. 43.
278 Kenedi 1908. 45.
279 Kenedi 1908. 45. f.
280 Kenedi 1908. 46.

party must wait for the court decision since without it by making the joint work public he would expose himself to legal consequences of usurpation.[281]

Individual intellectual activity manifests itself in subordinated scope too; it is not absolutely necessary that it should represent creation of a new object. The act does not distinguish protection between works made public and works not made public; so, it will be considered infringement of copyright when an unprinted manuscript is published without the author's consent.[282]

The first page of a printed work or a work in manuscript is usually the title page that indicates the subject matter of the work and in many cases produces serious effect with respect to the financial profit the author or the publisher expects to receive from making the work public. It arises as a question whether it can be considered infringement of copyright if somebody uses the title of an alien work in an unchanged form for an otherwise independent work. The title of the book does not serve to communicate thoughts, its prime aim is to indicate the writer's work; therefore, it cannot be considered writer's work—although it constitutes a part of it—and it follows from this that the use of the title of an alien book itself will not implement infringement of copyright. Losses arising from such use belong to the scope of causing damage to property, pecuniary loss rather than to copyright law, and makes it possible for the person concerned to bring an action seeking prohibition of use and claim for compensation.[283]

It is considerably different from the issue of using the title whether the so-called "re-issue under a new title" *(Titelausgabe)* is lawful, i.e., the activity when the publisher adds a new title page and year of publication to copies of an older edition and indicates that the work has been published in new edition. Although in bookseller's business it is not regarded as fair practice, it is stressed that in this scope the fact of infringement of copyright will not hold even if the author has not given his consent to it, since what happens now is remarketing copies lawfully reproduced already. This argument will be sound only in the event that the author has transferred his copyright on his work without any reservations and infinitely to the publisher. If the author has assigned his work for only one edition (and that in a determined number of copies), then the publisher shall not effect any changes or modifications on specific parts of the work—in addition to publishing the determined number of copies, the manuscript and the mastercopy constituting a supplementary part of it. In this case, the publisher cannot reproduce specific parts of the work without the author's consent beyond the determined number of copies, and can market the produced copies solely under the title page edited by the author, with the number of the real edition attached to it.[284]

The question occurs whether each of the persons participating in creating the writer's work can be considered a contributor. It should be noted in advance that owing to the character of the thing none of the persons who deal with the work after it has been created are contributors. The act provides protection solely to the author, so the answer will be given by the term that defines author's capacity. As it has been mentioned at the beginning of the chapter, the author is the person through whose intellectual activity the writer's work is created; so, every and each person who carry out such activity during creation of the work is author or contributor; accordingly the party placing the order or the sponsor—as they do not carry out any intellectual activity during creation of the work—are not contributors. Nevertheless, it might occur that somebody brings contributions to the making of the work in such fashion that his activity does not qualify as author's activity—such non-independent contribution is a typical case of assistance—if its direction and content are determined by another person in such form that the work created during the contribution can be considered,

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281 Alföldy 1936. 19. f.; 83. f.
282 Szalai 1922b 12.
283 Alföldy 1936. 45. ff.
284 Alföldy 1936. 12. ff.

in terms of its intellectual content, the work of the person who determines it rather than the work of the person who directly creates it. The cases of such non-independent contribution can be determined only in particular cases, individually. It is important to note: the circumstance that one of the contributors has been indicated on the writer's work as author does not exclude demonstration of the fact that several people have carried out activity jointly in creating the work, however, until this has been proved the presumption that the author of the work is the person who is indicated on the first edition of the work will prevail. The act vests contributors with equal rights, each of them can exercise the right of reproduction, making public and marketing, as matter of fact, subject to satisfaction of the pecuniary claims of the rest of the contributors.

In accordance with Section 2 of Act XVI of 1884, collected works can be classified into three groups:

– The first group contains collected works where the contributions of each contributor are organically connected and constitute an integral whole (encyclopaedias).

– The second group contains collected works that are made up of several contributors' works separated from each other, covering separate subject matters in such form that they are compiled externally by the publisher, editor without any internal connections between specific parts (scientific periodicals, newspapers).

– The third group contains collected works that are compiled and published by the editor from documents not subject to the scope of the act.

Regarding works that belong to the first group the act sets out from the basic principle that if somebody publishes an independent work edited from the works of several contributors as parts, which itself constitutes an integral whole and he accomplishes it by obtaining, selecting and compiling specific parts according to a determined plan, then this will be real author's activity and as such will be entitled to protection by law. The collected works belonging to the second group as integral wholes, contrary to the above, are not covered by protection; in this case, as the act protects solely author's activity and the editor does not carry out any author's activity, only the specific parts will be protected. In the cases belonging to the third group, collected works are compiled from as yet unpublished documents, contributions not covered by legal protection (public property documents), where editing provides sufficient reasons for their protection, it being specified that preparatory activity without real publication will not establish editor's rights.

Regarding collected works, copyright will belong to the authors of specific parts. The aim of this measure can be formulated in the intention to set a limit to the editor's copyright. The editor can use copyright for himself to the extent that it is the result of his creative activity, that is, he has connected specific parts into an integral whole and thereby he has created an independent writer's work. However, he will not have copyright on specific parts even in this case, since they owe their creation to the authors of specific parts and not to the editor. It does follow from the above, however, that, in addition to assigning specific parts for the collected work, the authors of specific parts would be authorised to sell and print their works separately.

Act LIV of 1921 protects writer's works,[285] musical works,[286] works of the fine arts and applied arts,[287] photographic works,[288] text images, motion picture works,[289] maps, designs, drawings, figures and plastic arts works determined in the act[290]. Furthermore, treaties separately refer to scientific works, the act classifies them under the term works covered by

[285] Szalai 1922b 7. ff.
[286] Szalai 1922b 31. ff.
[287] Szalai 1922b 37. ff.
[288] Szalai 1922b 42. f.
[289] Szalai 1922b 43. ff.
[290] Szalai 1922b 42. f.

protection. Although the Rome Convention specifically lists lectures, addresses, religious and other speeches of similar character, in accordance with the act lectures, addresses, speeches will be protected only in the event that they serve the purposes of education or entertainment, however, both the act and the treaties are silent about what provides the work with the capacity due to which it is covered by protection. The act declares exclusivity of copyright; paying regard to this it has a law-of-things nature, and owing to that the author can assert this against anybody who injures him in his copyright. Concerning this regulation the act defines the following terms.[291]

– Reproduction: reproduction/duplication of the work in any procedure. It makes no difference whether the copy made of the work makes the work perceptible directly or by setting a mechanical equipment going. [292]

– Making public: any form of making the work (or merely its material content) public for the first time. The author must be granted the right to decide at its sole discretion if he wants to make his work public and in what form. New publication of a work already made public once by the person authorised to do so is no longer the author's exclusive right.[293]

– Publication (appearance): it is different from making public because it contains the purpose of marketing (putting into circulation) as published works are those that have been lawfully issued. Also, works shall be considered published when their reproduced copies are made obtainable, available to the public, that is, they are offered for sale or are otherwise distributed. Publication: Any form of making the work public, which can be unlawful too.[294]

– Marketing (putting into circulation): commencing marketing of the copies made of the work, which enables the public to obtain specific copies of the work. A person who keeps a copy of the work in stock for sale or keeps it ready for sale will also market the work.

– Keeping in circulation: it is different from marketing (putting into circulation) to the extent that the publisher is the party who puts the work into circulation, and the trader—if the work has been published not by him—is only the party who keeps the work in circulation.[295]

The right of reproduction, making public and marketing does not amount to the sum total of the exclusive rights of the author provided by the act. In addition to the above, the author has exclusive right to public performance of theatre plays, musical plays and motion picture works even after they have been made public, to presentation of works of the fine arts already made public, by mechanical or optical equipment for business purposes. The author has the right to issue exclusive licence to another person to sell his work in his own translation, use, adaptation, i.e., to reproduce, make public and market the translation, use, adaptation of the work made by him. These rights apply to the sale of the work. Furthermore, the author has exclusive right to decide whether his name should be indicated on his work or any changes can be made in his work. These are the author's moral rights.[296]

Anybody who uses an author's work with his consent for the purposes of another genre, adapts it without creating an independent original work or translates the work of another person will not become a co-author, and can dispose over the work produced by use, adapted or translated only without injury to the rights the author of the original work is entitled to, i.e., can sell the work so created solely with the consent of the original author.[297]

The act states that reproduction, making public and marketing of the translation of writer's works into any language without the author's consent shall be considered infringement of

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291 Alföldy 1936. 15.
292 Alföldy 1936. 15. f.
293 Alföldy 1936. 16; Szalai 1922b 8.
294 Alföldy 1936. 16. f.
295 Alföldy 1936. 18; Szalai 1922b 8.
296 Alföldy 1936. 15. ff.
297 Alföldy 1936. 19. f.

copyright.[298] Actually, anybody can translate a writer's work but the consent of the author of the original work will be required for selling the already completed translation, for public performance of the translation of theatre plays and for communication of the translation to the public by radio.[299] In accordance with Section 8 of the act translations, adaptations, indirect acquisitions, any reworking and use of the original work enjoy protection identical with the protection granted to the original work, without injuring the rights the author of the original work is entitled to; this protection, however, will be obviously granted to utilisations, adaptations only if they represent peculiar individual intellectual activity. If the work created by using the original work departs from the original work to such an extent that it is presented as a new original work, the author will have the right to dispose over it without paying regard to the rights of the author of the original work.[300]

As translations and the completed adaptations contain the original work, in the former reference must be always made to the author of the original work as it was indicated on the original work, but by indicating the translator's or adapter's own name or pseudonym or otherwise it must be expressed that the translation, adaptation does not arise from the author of the original work because otherwise it will violate the moral rights of the latter.[301] With regard to the scope of the right to translation, use and adaptation, the contract entered into between the parties governs; so, for example, if somebody can acquire right to translate the work into another language, to rework or adapt it in any form, then, in the absence of any other stipulation, here again the acquired right must be considered exclusive unless the contrary can be deduced from the circumstances of the case.[302] To sell the work completed with the permit of the author of the original work, the translator, user, adapter—in the absence of any agreement to the contrary—will not have to obtain the consent of the author of the original work except when the relevant sale is such that the parties could not have kept it in view when giving the permit.[303]

If somebody has acquired right from the author of the original work to translate, adapt the work, etc., then within the permit obtained from the author on the grounds of the right he is entitled to he will have the right to act against anybody who violates him in his right. The translator, adapter, user, with respect to their activity, will be entitled to copyright separate from the copyright of the author of the original work, and they will not become co-author of the author of the original work either unless co-authorship can be deduced from the parties' agreement according to the circumstances of the case. They will be protected against third parties with respect to their own completed work just as the author of the work.[304]

Special provisions with regard to literary works were adopted by Act III of 1969 on the frequent case when collected works compiled by scientific institutions or state bodies are published. In accordance with the provisions known in our copyright law, in this case author's rights are exercised by the institution (body) carrying out compilation, and the term of protection of the work must be calculated from the year following the year of first publication. Without this provision, scientific institutions and state bodies could not exercise author's rights on the collected work as an integral whole, their work would not be covered by copyright protection. Nevertheless, author's of specific parts can continue to exercise their rights on such specific parts, beside the author's rights covering the entire work that the institution (body) carrying out compilation is entitled to.[305]

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298 Act LIV of 1921
299 Alföldy 1936. 66.
300 Alföldy 1936. 66. f.
301 Alföldy 1936. 67.
302 Alföldy 1936. 67.
303 Alföldy 1936. 68.
304 Alföldy 1936. 68.
305 Petrik 1990. 175. ff.

In accordance with the act, author's fee must be paid on public performance of literary works not meant for stage, if otherwise the case of free use regulated in Sections 16–21 does not hold. Implementation of this rule is facilitated by the adopted statutory protection on giving the author's consent through discharging the author's fee. For works not meant for stage presented in public performance are literary works of short volume where obtaining the author's consent for specific occasions would make use difficult.[306]
Author's rights must be enforced also with respect to illustrations of literary works by stipulating the author's consent.

VI. 2. 2. Dramatic works

Act XVI of 1884 restricts right of public performance to theatre plays, musical plays and musical works, for they are usually meant to be presented to the public in artists' performance. There is no need for reservation of rights, whereas the act does not bind public performance of other writer's works to the author's permit if they have already been made public.
Theatre plays can consist of one part to be played by the performer in the stage presentation written down in the work. Public performance of plays reserved for the author should usually mean their stage performance, i.e., a performance carried out through playing parts arranged in scenes. Recitation of plays or certain parts thereof already made public is allowed because such recitation cannot be considered public performance of the play in terms of copyright law, whereas recitation of plays where parts are performed to a certain extent falls within the scope of prohibition of public performance. Communication of theatre plays to the public by radio requires the author's consent. Stage performance of plays can be carried out by living persons, by reproducing their performance by living persons in a film or by puppets.[307]
Musical plays shall mean theatre plays where the words and music are organically connected, such as operas and operettas. Musical plays and theatre plays include oratorios if they are "equipped with" choruses and private parts.[308]
Special gatherings held under names of casinos, clubs with a large number of members and other similar names lack the character of family gathering due to the number of persons authorised to attend. So, in terms of the application of the copyright act they qualify as public performance even if associations hold these special gatherings at their own premises without admission fee and they can be attended only by members of the association and possibly members of their families or the guests they can invite. Section 50 of Act LIV of 1921 considers pantomimes, dumb shows and choreographic works, in terms of copyright law, either theatre plays or—if they have music—musical plays based on their content[309], emphasising that these works are protected works in every respect. In accordance with the Berne (Rome) Convention, oral works can be covered by protection only in the event that the form they are staged is fixed in writing or otherwise, i.e., in any form. This act does not bind protection to such prerequisite, although the ministerial reasons for the act refer to the above-mentioned provision of the Convention.
The act covers theatre plays, musical plays and musical works created through translation, use, adaptation also with respect to public performance by protection similar to that provided for literary works. The translator of the yet protected play will have exclusive right of public

306 Petrik 1990. 176.
307 Knorr 1890. 147; Kenedi 1908. 158.
308 Alföldy 1936. 129. ff.
309 Szalai 1922b 33. f.

performance of the completed translation only in the event that the author of the play has transferred this right to the translator.[310]
In accordance with Section 52 of the act, right of public performance extends to the mechanical performance mentioned in Section 6 (9). The act prohibits public performance of plays, musical plays and musical works both when such works are performed directly by persons in public and when the public performance is communicated by equipment serving mechanical performance to the public, in the presence of audience gathered at a determined place. Section 53 sets exception to the provision on co-authors that without prejudice to the rights the authors are entitled to against each other it is sufficient to have the composer's consent to performing a musical work with words; so, there is no need for the librettist's consent, on condition that the author of the words has given consent to setting his work to music. The act removes musical works from the scope of this exceptional provision**,** whose public performance requires the consent of both the librettist and the composer. When regarding other musical works the act considers the composer's consent sufficient, it stresses that it does not affect the rights the authors have against each other.
Section 54 extends the rules set regarding writer's works to the right of public performance, if they are suitable for that, with respect to the content of copyright. Section 55 stipulates that provisions of Sections 11-17 shall be applied properly to the duration of the right of public performance, but the act separately provides for works created under pseudonym or without indicating the author's name and bequeathed works. In accordance with Section 57, anybody who performs or causes to perform a theatre play, musical work or certain parts of such works without the author's consent wilfully or negligently commits infringement of copyright. To ensure that restaurants, cafés and other public places of entertainment can be efficiently controlled in terms of public performance of musical works, the Association of Hungarian Librettists, Composers and Music Publishers was founded to prevent unauthorised performances and protect public performances of musical works outside the stage *(petit droit)*. The scope of the cooperative society does not include stage performance of pieces of music contained in musical works, related to theatre plays. According to its standing order, every newly accessed member is obliged to make a statement, in which it transfers the right of public performance of all its musical works to the Cooperative Society, irrespective whether the author has notified its musical work to the Cooperative Society or not. Thereby, owing to the fact of accession, the Cooperative Society acquires the right of publication of all the author's musical works, except for the musical works that have been made for a determined night-club or stage and for musical works with foreign words obtained for such purpose; the Cooperative Society brings these works to the notice of its clients in the journal of the Cooperative Society. Those who perform or cause to perform musical works in public will acquire right to public performance of protected works from the Cooperative Society against payment of royalty in a determined amount, and the net income received from royalty will be allocated between the authors according to a determined rate, enabling them to earn a living.[311] Thereby they want to avoid that those who acquire right to perform protected musical works from the Cooperative Society against payment of royalty in a determined amount could be held responsible for the performance. The author himself has the right of public performance of theatre plays and musical works, but mostly it is the publisher to whom the author transfers the right of public performance. The author of a play will usually enter into a contract with the stage publisher in order to ensure possibly the most successful stage performance and sale of his play. Under such contracts the author assigns exclusive right of disposal over the stage performance to the publisher it being specified that on the grounds of the contract the publisher will have the right and will be obliged to take steps necessary for

[310] Alföldy 1936. 132. f.
[311] P.I. 3935/1928.

protecting copyright. The publisher is obliged to deliver income based on determined settlement of accounts to the author, after deducting the commission the publisher is entitled to under the contract. Quite often, in the contract the author usually assigns the right to translate, adapt the play, make a film of it, and communicate it by radio to the stage publisher. The Society of Hungarian Stage Authors was founded for the benefit of stage authors with the aim to develop national literature, represent and protect intellectual and financial interests of stage authors and translators. For the benefit of its members, it collects royalties payable on public performances of dramatic works and takes statutory actions against theatres not paying author's fees. It does not dispose over members' theatre plays, however, it has the right to give permit for amateur performances of theatre plays; against payment of royalty, also on works whose authors are not members of the Society. As entrusted by its members, the Society handles the royalties received from making their works public by radio.[312]
Section 58 properly extends the provisions on legal consequences of infringement to rights of public performance but does not refer to Section 22[313] because as a whole it is not suitable for being extended to public performances. Section 59[314] properly extends the rules on judicial proceedings, copyright expert committee, limitation and registration set out for writer's works, if they are suitable for it, to rights of public performance.
With respect to performance of theatre plays made public, Act LIV of 1921 provided special allowance for amateur art groups: the performance does not require the author's prior consent, furthermore, no royalty shall be paid if the performance does not serve the purpose of profit-making or increasing profit and participants are not paid any fee.

VI. 2. 3. Musical works

Musical works are also intellectual products, they are produced and sold in the same form as literary products. The intellectual activity that shows itself in a composer's composition needs the same legal protection as literary products. The form of appearance of musical works is quite diverse; be it any form it will be covered by copyright protection if they have certain requisites. Such requisites are, for example, that they should be the product of the author's intellectual activity and they should be such musical works that can be published. The act sees the cause for protection in the fact that musical works, just as writer's works, are distributed by printing and engraving, and that the composer has the same relation to his composition as the author to his writer's work. So, the composer will have the exclusive right to mechanical reproduction, publication and marketing of his work.[315] That is why Section 45 states that the provisions of Sections 1–6 and Sections 9–44 are applicable also to the composer's right of reproduction, making public and marketing. Concerning musical compositions, infringement of copyright will be implemented not only when they are simply copied but also when the work is adapted in any form that basically cannot be considered individual composition. Whereas the act allows that existing musical works could be freely used in creating a new work which results in one's own intellectual product. *Quodlibet*s, if they consist of small parts, bars adopted from specific works, do not implement infringement, when the source is specified as in case of quotations adopted in literary works.[316]
Section 47 sets the same exceptions with regard to musical works, with slight deviation, as Section 9 regarding writer's works. So, compared to writer's works the difference is that the act does not allow adopting of musical works in collected works meant for ecclesiastical use,

312 Alföldy 1936. 141.
313 Szalai 1922b 36.
314 Szalai 1922b 36.
315 Knorr 1890. 142; Szalai 1935. 37.
316 Kenedi 1908. 146. ff.; Knorr 1890. 142. ff.

and it stipulates that the only condition of quoting and adopting is that the author or the source must be specified.[317]

Section 48 mentions merely exceptional cases regarding musical works, their existence do not implement infringement of rights either. This section stresses the case from among conducts implementing infringement of rights when a writer's work is used as the words of a musical work, provided that these words are written down, printed together with musical accompaniment. The reason for that is that in such cases the music itself constitutes the material part of the creation, and the writer's work is not seriously injured by such use; however, even in this case the condition will prevail that it should be a work already published or the author should give his consent to use of a work not published yet. The act removes writer's works that are owing to their nature written only for musical compositions such as operas, operettas and oratorios from among writer's works that can be used as words. Furthermore, this section states that the author's consent is required for publishing words without musical accompaniment. This applies to works that are usually performed with musical accompaniment.

Act LIV of 1921 takes over rules on musical works from the former statute. It is allowed to use the tune of a musical work covered by protection if a new original work is created through use. Whether a new original work has been created will be decided by court, possibly on the grounds of an expert's opinion. In accordance with the act, it is the author who has exclusive right to reproduce, make public and market musical works within the term of protection. Reproduction can be carried out by musical notations through prints, manual copying or recording on gramophone records and film, while marketing means putting specific copies of prints, manual copying, gramophone, film recordings into circulation.[318]

Reproduction, making public and marketing of musical works can be the subject of publisher's transaction. Section 46 properly extends rules set for the content of copyright concerning writer's works to musical works. Provisions of Section 6 (9) applicable to musical works provide mechanical performances with mechanical protection against their use.[319]

Setting a writer' work to music requires the permit of the author of the writer's work. Act XVI of 1884 allowed use of already published writer's works as words of musical works for joint printing without the consent of the author of the writer's work.[320] The 1921 act modified this provision because it cannot be harmonised with the spirit of the Berne Convention and because it is unfair to demand that, on the one hand, the poet should tolerate that his poem is set to music even in spite of his will, on the other hand, that the words should not receive the part from the financial result of the musical work it is lawfully entitled to.[321] Actually, anybody has the right to set a writer's work to music, but if he reproduces, markets the writer's work set to music without the permit of the author of the writer's work, then he commits infringement determined in Section 5.

Section 2[322] allows that the audience of a concert should follow the words of the performed musical piece by reading which advances understanding and enhances enjoyment of the performance. To protect librettists' interests, the act allows production of these copies of the programme solely for the audience of the concert,[323] the right of reproduction of the words belongs to the director of the relevant public musical performance. Section 48 properly extends the provisions set with regard to term of protection, legal consequences of

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317 Knorr 1890. 144; Kenedi 1908. 152. ff.
318 Alföldy 1936. 124.
319 Szalai 1935. 37.
320 Szalai 1935. 35.
321 Alföldy 1936. 125. f.
322 Szalai 1922b 32.
323 Alföldy 1936. 126. f.

infringement, judicial proceedings, copyright expert committee, limitation and registration concerning writer's works to musical works.
In everyday circulation, the author's mechanical rights mean the author's exclusive right to sell the work by gramophone and other similar equipment but mechanical rights do not mean the right of recording on film and transmission by radio. To the marketed gramophone records they stick the "licence marks", including author's royalty, of the person who has the mechanical rights on the work, to prove that the gramophone record containing the protected work is in circulation with the permit of the subject of mechanical rights and that royalty has been discharged for the protected work. In terms of copyright, sale of gramophone records must be considered unlawful where the licence mark has been attached to such records but the stuck on licence mark has later fallen off; in this case it is necessary to obtain special licence (additional mark) of the person (body) who owns the rights to sell.[324]
Public performance of musical works already made public—except for stage performance of musical works or complete performance of musical works meant for the stage—is facilitated worldwide by copyright laws and international agreements, which presume that the author's consent has been given to the performance against payment of fee.
This arrangement was enforced by Act III of 1969 too. There are words available for a part of musical works, which are covered by protection as independent writer's works. The act solves this question by stating that in performing musical pieces music is primary and words have auxiliary additional role only; therefore, under copyright protection obligation to pay fee is adjusted to the protection of the musical work.[325]

VI. 2. 4. Films and other audio-visual works

Films are always made by using several author's works and are the result of collective activity; at the same time, they are presented to the audience as a uniform creation. Act LIV of 1921 reckons with this peculiar feature of films when, on the one hand, it recognises rights of authors who bring contributions to the making of the film, and, on the other hand, it authorises the film factory to exercise their economic rights against third parties as legal successors exclusively. By this solution the act does not take over the presumption known in some copyright acts that the author of the film is the producer of the film; yet, it properly ensures the rights of the film factory regarding the film.[326]
The film factory acquires the right of distribution and public performance on the film made by using various author's works, without restrictions. The act gives the author right of withdrawal if the film factory does not record the work on film or does not complete the film. Concerning withdrawal, the act restricts the author's claim for fee to the case where the author has carried out creative work expressly for the purposes of the film. At the same time, the act contains competition rule for the benefit of the film that the author can enter into a new film contract on an identical topic within ten years from completion of the film only with the consent of the film factory.[327]
In addition to film factories, other bodies deal with making films, it is therefore reasonable to put these bodies in a legal position identical with that of film factories if they enter into film contracts.
In the case of the act in force today, characteristic features of creating and using film works and international norms alike make it necessary and possible to regulate these works at special level.

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[324] P.I. 557/1933.
[325] Petrik 1990. 193. ff.;
[326] Alföldy 1936. 167. ff.
[327] Petrik 1990. 212. ff.

The act defines the term of the producer of the film, which has significance in regulating producers' neighbouring rights, however, the person who extends credit to the film producer, sponsors production and places the order are not considered producers. Film producers contribute to creation of the film by organisation performance, in this regard they enter into film contracts and direct filmmaking contracts with authors on creating the work. As a matter of fact, film production requires other civil law contracts too, so especially principal and agent, contractor's, credit and rental agreements; framework rules pertaining to them are contained in Section 64. Finalisation, final editing is a peculiar form of author's moral rights, in accordance with Section 65 copyrights on the entirety of the film as a work with several authors can be exercised only after that.[328]
Film contract is a peculiar type of use contracts. The act regulates devolution of rights of use in more details and in a more subtle form than Section 41 (3) of the formerly effective Act III of 1969, and allows stipulations to the contrary.

VI. 2. 5. Technical, fine arts and applied art works

Works of the fine arts are not pure imitations of specific figures of reality; instead, the artist communicates his own thoughts, ideas, emotions by these figures; so, in order to consider an object a work of the fine arts it is necessary that its creator should be controlled by an aesthetic goal, which becomes complete in the creator's "activity to give shape", i.e., that some object should be made of his thoughts.
Act XVI of 1884 protects the author of the work, i.e., only the person who has created the work, who has the individual intellectual work, will have copyright on the work, however, assessment of this copyright can be excluded by the fact if the work is in conflict with law.[329]
Several persons can contribute to creating a work of the fine arts, for example, when specific parts of a work are created by several persons, or various phases of creating a work are implemented by different creators. In such cases, as a matter of fact, each co-author will have copyright regarding his own activity. If the co-authors' works are so closely interrelated that they cannot be externally distinguished, or, even if the parts created by specific authors can be externally distinguished but they constitute an integral whole only when put together, then we can speak about a single copyright, which can be asserted by each author, giving indemnification to the rest of the authors. If the authors' works can be distinguished, they constitute independent parts of the work, there is separate copyright on each of the separable parts, which they can assert separately. In creating fine art works, contributions can be brought by persons who only assist others in carrying out the work, this kind of contribution does not generate co-authorship.[330]
The creative process can involve a person who entrusts the artist with making the work. Such a person will contribute as the party placing the order, who is usually not entitled to original copyright but can enter into a contract with the creator under which the author transfers copyright to him without any or with certain restrictions. Publishers can be involved in relation to fine art works if the object of publication is engravings. The publisher will have copyright on the original work only in the event that it is the author or acquires this right through transfer. The editor or the publisher who compiles collected works from specific fine art works will have copyright similar to that of editors of collected literary works.[331]

328 Gyertyánfy 2006. 335. ff.
329 Knorr 1890. 160.
330 Knorr 1890. 161. f.
331 Knorr 1890. 162.

Adaptation is basically different from copying/reprography because it means alteration of the alien work through artistic activity by which a new fine art work is created. The adapter will have original copyright on this new work.
Section 61 of the act uses the term ”remaking” collectively for any act that prejudices copyright of fine art works. Usually this covers three cases. One of them is copying the work, i.e., the process where the perpetrator produces each part of remaking by free artist activity: either by repeating the procedure used in the original or using another artistic procedure, for example, drawing an oil painting. The other is mechanical remaking where external aids are used to produce copies, such as, for example, making a photo or impression. The third one is mechanical reproduction where first a copy of the picture suitable for duplication is made from the original by free artistic activity that later can be reproduced. It is unauthorised remaking of fine art works and not making them public that the act prohibits, because the right of making public and marketing belongs to the author, which the author does not lose and is not restricted by another person making it public.[332]
Remaking can be committed by several persons jointly, who are to be punished as perpetrators or parties privy to the act, if they are bad faith. Imitation means borrowing the technique, form of representation of the artist’s specific works, and as this kind of imitation does not mean conveying the material content of a work, the act does not classify it as violation of copyright. The act protects the author from remaking, i.e., repeating his work with identical content but it does not forbid other persons to use it freely for producing their new intellectual product. The act does not prohibit making copies that are made by amateurs or students for their own use. Subject to meeting certain conditions, statutory prohibition does not apply to single or manual copying made without mechanical equipment for reproduction.[333]
Section 62 does not consider remaking of works (statues) permanently erected in streets, public domain and other similar public places in another genre infringement of copyright.
It was justified for the sake of literature to remove remaking from the scope of statutory prohibition where an artist makes a fine art work public as writer’s requisite in a writer’s work for the purpose of interpretation, demonstration, illustration. As a matter of fact, uniting with literary content does not mean that the artist has waived his author’s right. The act makes inclusion in a work without the author’s consent subject to meeting two conditions: (i) the text should appear as main object beside the copy of the picture so that the latter should function merely as explanation, (ii) remaking should apply only to specific works. [334]
Remaking of specific works can be included in non-scientific and certain literary works too, however, the act demands that remaking should be closely connected with the new creation, writer’s work.[335]
In the creation of writer’s works, in addition to the author’s intellectual activity, only the printer’s work can appear, who does not acquire copyright, only if it is expressly transferred to him; however, in remaking fine art works usually other artistic work is involved, which is usually carried out by an artist with a different approach and requires a different kind of talent than for making the original work. Remaking fine art works is the exclusive right of the author of the work, who, however, can permit lawful remaking, or, once the work has become public domain, there is no need for the author’s consent. The creator of lawful remaking will acquire copyright on his new own work, which is justified by the fact that remaking of a work, if it is not done mechanically, will always contain an artistic element, or presumes

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332 Kenedi 1908. 172. ff.; Knorr 1809. 159. ff.
333 Knorr 1890. 167. ff.; Kenedi 1908. 174. ff.
334 Knorr 1890. 166. ff.; Kenedi 1908. 174. ff.
335 Alföldy 1936. 75. ff.

intellectual creative activity, which has the right to be protected against unauthorised remaking.
Narrowing this scope, the act expressly prescribes that copyright protection shall be given solely to remaking that is carried out in a genre or kind of art different from the original. The other case is when the lawful remaker can be considered author regarding his work, if the exclusive right of the author of the original work terminates and thereby the work becomes public domain. This is different from the above to the extent that in that case the term of protection of the original work might expire sooner than that of the remade work, while in this case only the remaking can be protected from the first.[336]
It follows from the law of property character of copyright that it can be divided, which is clearly shown by the fact that the authorised party either transfers the right restrictively or transfers the entire right but for the benefit of several persons.
Copyright is attached to the author as a person, for this reason, if somebody acquires ownership of a fine art work, he will not get in possession of copyright; furthermore, adverse possession and foreclosure do not lie with regard to copyright. This justifies the provision of the act that by transferring ownership of a fine art work the right of remaking cannot be considered assigned. Sale of the original work can involve ordering of remaking or transfer of copyright only in the event that it becomes unambiguously clear from the conduct aimed at the above.[337]
The person placing the order (principal) is usually a person who entrusts the artist with producing the work. The act itself does not establish original copyright for the principal but he can agree with the author on derivative copyright, i.e., the contract between them will give answer to the issue of the principal's copyright. The act deviates from this rule with regard to portraits and likenesses of statues, because when ordering them the principal will undoubtedly have right of remaking and it is in his personal interest that his portrait should not be made public in spite of his will, provided that the principal desires that his own portrait should be made. In this case the creator cannot duplicate the ordered portrait in spite of the principal's will either before or after delivering the work. Consequently, the owner will not be automatically entitled to the right of remaking, however, he can prevent others from carrying out remaking or he can make it difficult since the work is in his possession and he can exclude anybody from it. In spite of that the lawmaker did not think that he should restrict ownership right due to copyright protection, what is more, he states that the owner is not obliged to deliver the work to the author or his legal successor for remaking.[338]
Applied art works, i.e., industrial products are produced by the same technical means as fine art works, however, industrial products serve external, physical use. Fine art works, by being made for industrial products, lose the protection provided by this act, and, having become a supplementary part of industrial products, fall within the scope of regulation regarding such products.[339]
Section 60 of Act LIV of 1921[340] provides for copyright protection of fine art works. The act covers all works of the fine arts with protection, irrespective of the form or shape of their physical appearance. It does not distinguish between works used merely for aesthetic purposes and works serving as objects of personal use, i.e., applied art works. In terms of protection it makes no difference if the creation is in its final form or in any of the phases of creation.[341]

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336 Alföldy 1936. 144. f.
337 Alföldy 1936. 145. f.
338 Alföldy 1936. 144.
339 Alföldy 1936. 149. ff.
340 Szalai 1922b 37. ff.
341 Alföldy 1936. 145. ff.

In accordance with Section 67[342] designs, drawings, figures mentioned in it, which can be considered fine art works, are judged identically as applied art works. Protection is provided merely for artistic elements of these works, so protection does not extend to inartistic, conventional works, although the same applies to architectural works. The term architectural works is not restricted purely to built structures, it can include architectural works not connected with land surface. In accordance with the act, reproduction, making public and marketing of fine art works within term of protection is the author's exclusive right. The act considers remaking, subsequent construction reproduction. The act mentions commercial presentation by mechanical or optical equipment as a new title, it makes it the author's exclusive right, which serves that fine art works already made public should not become objects of shows for business purposes by projector and similar equipment without the author's consent. The act reserves the right of commercial presentation only for the author.[343]
Violation of author's rights provided in Section 60 is infringement. Section 62 makes exceptions to the general rule for the sake of free development of art and the public. This section specifically stresses that copies shall not be made for the purposes of distribution, which can be deduced from the circumstances of the case. Furthermore, it is forbidden to exhibit the made copy in public and to use the mark, name or initials of the name of the author of the original work on the copies; in case of breach of the latter prohibition making of the copy will become unlawful and will be considered infringement. Furthermore, subsequent construction of architectural works is forbidden, even if they are free of charge. The act allows reproduction of works erected permanently in streets, public domain outdoors, but only in picture representations. The act does not remove the works erected temporarily from protection.
The act discusses when it is possible to include a copy, remaking of a fine art work in a writer's work, and for the sake of general education it allows inclusion of faithful duplication of already published works in restricted volume justified by the purpose, but only in larger independent scientific or educational works solely for use in schools, in collections edited from several authors' works. Faithfulness of duplication cannot be affected by proportionate modification of the dimensions of the work or simplification indispensable owing to the used technical procedure. This does not include non-independent scientific works, which contain mostly materials taken over from others except when they can be considered works for disseminating scientific knowledge. Inclusion can be carried out only for interpretation of the text, so it makes no difference whether the illustrations are within or at the end of the text, but they cannot be in a separate appendix; in inclusion the source and the author must be indicated. To advance dissemination of knowledge in general education, in this section the act made presentation of faithful duplication of already published works through mechanical or optical equipment free, but solely for the purposes of illustration within lectures, addresses held for scientific, general education or school purposes. In accordance with Section 63, the ownership right on the work as a thing in the sense of private law must be clearly differentiated from author's right on the work as intellectual product.[344] Obliging the owner to surrender the work to the author for the purposes of reproduction in several original copies might prejudice his lawful interests. Anyway, the author or his legal successor, when transferring a fine art work, will always have the opportunity to stipulate that on request the owner should make it possible for him to duplicate, remake the work. Nor is there any rule of law that would oblige the owner to assign the work of art temporarily for exhibition, even if it is for the purposes of national culture; whereas nothing will prevent the owner from agreeing with the author that he should not make any new original copies of the work purchased by

342 Szalai 1922b 42.
343 Alföldy 1936. 159. f.

him, and he can ensure compliance with such agreement. In accordance with Section 64, with respect to ordered portraits and likenesses of statues, in addition to the author's consent, the principal's approval will be required. Anybody who violates this provision of the act shall pay compensation and shall be punished by the penalty defined for infringement. The principal can prevent, with respect to the ordered work, reproduction, making public, marketing or commercial presentation, communication by radio he is not pleased with for any reason by refusing to give his consent to all the above to the copyright holder. The principal can exercise this right also when the portrait or likeness of statue is not covered by copyright protection or he has not paid for the portrait of likeness of statue. If the author duplicates, makes public the work without the principal's permit, then he will be liable to the principal. The principal will be entitled to duplicate the work even without the author's consent, but only for non-business purposes, and he will not be entitled to make public, market the copies produced by reproduction. If the principal is not identical with the person portrayed, the person portrayed will have the right arising from his personal rights to resolve if his portrait or likeness of statue is to be made public or not. Violation of the said right of the principal (person portrayed) will involve the same legal consequences with respect to penalty and compensation as violation of copyright, infringement; otherwise, however, the principal's right is not judged identically as the author's right, therefore, protection cannot be extended to the period after his death. The right will not devolve to the legal successor either unless he has already commenced statutory proceedings in his life, in this case relatives can take action in their own right after his death, but can demand discontinuation, moral damages by virtue of prejudice to personal rights only on the grounds of general private law.[345]

Section 65[346] stipulates proper application of the provisions regarding writer's works, referred to in it, to fine art works. It is not allowed to annihilate built structures on the grounds of the provisions set forth in Section 20—even if they have been produced through infringement—or to give them in the ownership of the subject of copyright for the price of their production and to deprive them from their damaging shape without material injury to their corpus. In determining the amount of compensation the injured party is entitled to, attention must be paid to the possible injury that shows itself in survival of the infringed shape of the built structure.

Act III of 1969 acknowledges copyright of the designer of architectural and other technical facilities having carried out creative work and ensures that he could claim indication of his name on the building itself and on the facility.[347] Furthermore, the act had to make sure that the author's rights of the creator of architectural and technical facilities with regard to presentation of the work could not be prevented by the user of the facility without good cause. Rules are in line with present practice, however, express acknowledgement of creative designer work in rule of law is a new element.

Also, the act acknowledges artistic photos as creations, it provides copyright protection for them in rules identical with those applicable to fine arts and applied art works; regarding photos not attaining artistic level provisions of Section 51 govern.

Identically with statutory provisions, the act enforces the standpoint, among general rules of use contracts, that giving fine art and applied art works into the ownership of another person does not simultaneously mean alienation of the right. It follows from this proposition that within the limits of the owner's equitable interests it is necessary to ensure exercise of the author's rights, and it is necessary to stipulate that the author's consent must be obtained for exhibiting the work. As a matter of fact, public collections should be exempted from consent necessary for exhibition, they can freely exercise right of exhibition in their operation for

345 Alföldy 1936. 153. ff.
346 Szalai 1922b 41.
347 Petrik 1990. 233.

intended use on works safeguarded by them, and such exception is justified with respect to works in social ownership.[348]
A new provision of the act covers copyright protection of industrial designs, which form of use has been developed by aesthetic requirements industrial products are expected to meet.
With respect to portraits made on order, to protect the rights of the portrayed person, author's rights must be restricted so that their exercise should require the consent of the portrayed person; this means, for example, that the consent of the portrayed person must be obtained for duplication of the portrait.[349]
In the currently effective act it continues to be the author's exclusive right to permit exhibition of fine art and other similar works.[350] Only with respect to exhibition of works safeguarded in public collections is it justified to allow exceptions to this rule.[351] The currently effective act regulates the institution of the "right to follow", the so-called *droit de suite* (i.e., subsequent right; right to an interest in resales subsequent to the first transfer), without considerably changing the provisions set forth in Section 46/A of Act III of 1969.[352] It is a typical form of use of fine art and applied art works to transfer ownership of the original work. Thereby the author's right on the creation and the ownership in the thing on the original copy of the work gets in conflict, which is solved by copyright regulation as follows: although it does not require the author's consent to transfer, it acknowledges his claim for author's fee. It is part of the explanation for justification of this claim for fee that the value of certain works of art can rise in circulation to the multiple of the original purchase price, generating significant profit for the intermediary business, the art-dealer; obviously, the creative artist author and his legal successor can deservedly lay claim within the tem of protection to sharing such increase in value of the work.[353] The act makes it clear that the first effective date of the subsequent right (right to follow) will be solely after the first transfer by the author; it sustains obligatory collective rights management in this scope; it subjects interior design works to the scope of regulation of industrial designs.

VI. 2. 6. Protection of photographs, figures and visual aids

The drawings and figures covered by protection under Act XVI of 1884 can be divided into various groups:
- aesthetic representations,
- instructive representations,
- industrial representations, drawings serving satisfaction of man's other physical needs, in addition to the above.[354]

First, the act discusses protection of drawings and figures serving scientific purposes, helping education, which are not fine art works owing to their character. It does not follow from this definition that only drawings and figures with real scientific value will be covered by protection; however, in this case it is also indispensable that the figure or drawing should be suitable for publication as a result of intellectual activity. Secondly, this section provides for the protection of drawings that can be considered fine art works owing to their function. Paying regard to the provisions set out in Section 9 (1), the act allows inclusion of alien figures and drawings in scientific or other kind of works that have been created from several

348 Petrik 1990. 237.
349 Petrik 1990. 240. f.
350 Gyertyánfy 2006. 351. ff.
351 Gyertyánfy 2006. 362. ff..
352 Gyertyánfy 2006. 367. ff.
353 Gyertyánfy 2006. 357. ff.
354 Knorr 1890. 176. ff.; Kenedi 1908. 181. ff.

authors' drawings for school and education purposes. It does not qualify as infringement of rights when drawings and figures serve the interpretation of the text only and the author or the source have been indicated. In accordance with the act, photographs are not fine art works in the traditional sense since the photo itself is not the author's intellectual activity; therefore, it cannot be ranked among copyrighted objects of the fine arts. The lawmaker, recognising and accepting that good regulation calls for sense, taste, application of scientific and technical information and that impunity of the remaker would make the activity of just the best photographers doubtful, included photographs in the scope of legal objects to be protected.[355]
The object of protection is all works produced by photography in the event that the object presented in the picture is not the object of copyright. If the object to be presented in the picture constitutes the object of protection, the photograph will not be covered by special protection, since in this case the photographer will be protected by being the author's legal successor. This protection, as a matter of fact, will hold only when the photographer has acquired the copyright from the author of the original work.
Legal protection is due primarily to the maker of the original photograph; this right can be transferred by contract or measures taken in case of death; if there are no such measures, the author's right will devolve to the inheritor of the maker of the original photograph. Protection of photographic works are conditional upon the name or company and address of the author or publisher of the original photograph, the date of making the photo being indicated on the authorised proof sheets of the photograph or each copy of its remaking. Photographs cannot be registered. Term of protection for photographs is five years; the deadline begins from the calendar year when the first authorised copy or remaking of the photograph has been published.
If the photograph has been made public in a literary work, longer term of protection will not be due to the author of the photograph; specific proof sheets or remakings can be duplicated after five years. Regarding works published in several volumes, again the rule of Section 16 applies that states that term of protection for works published in several volumes begins from the first publication of the given volume. The act protects photographic works against mechanical remaking irrespective of the character of the procedure, however, it does not protect them against non-mechanical remaking.
For fine art works the act allows free adaptation, which is implemented with regard to photos too. Furthermore, the act permits use of photographs on industrial products or in other genres or kind of art.
Act LIV of 1921 interprets photographic works as works made through photography where picture representation produced in a chemical process is mediated by light effect. For photographic works, the author's intellectual work deserving protection lies in the selection of objects and persons represented and producing the result, for this does not amount to art yet. A photographic work is not a peculiar individual expression, elaboration of what the author observes or has experienced in the outside world; it is merely fixation of a detail or event of the outside world in picture representation through a technical operation. The photographic work under protection is the original photograph (snapshot) itself and not a photographic reproduction of other kinds of works. The author of the original photograph has exclusive right of reproduction, making public and marketing of the photographic work, their commercial presentation by mechanical or optical equipment,[356] the latter have practical significance specifically for photographic works. As making a photographic work is not art, although needs some sense of art and scientific preparedness, for this reason, legislations usually set shorter term of protection for photographic works than for other works. For works of photography the term of protection extends to fifteen years from the calendar year when the

[355] Knorr 1890. 180. ff.; Kenedi 1908. 183. ff.
[356] Szalai 1922b 42.

work was first published, and if it was not published during the author's life, the fifteen years is to be calculated from the end of the year when the author died.
Anybody who violates the exclusive right of the author of photographic works determined in Section 68 commits infringement.
The act separately regulates film copyrights.[357] Motion picture works are products that represent actions, events, views before us in the form of motion picture shows. A film script, although it can be a writer's work, cannot be considered a motion picture work as long as and until it takes shape in a film. The photographed copy of a motion picture work is the proof sheet of the film. In sound films, the sounds accompanying the pictures are made perceptible to us by the sound track on the reel or other technical equipment through running the roll of film. In accordance with the act, motion picture works are covered by protection identical with the protection provided for writer's works, fine art works or photographic works if their author has given the work an individual character in devising the plot, in the form of rendering or direction or in grouping the events shown and other representations or otherwise.
Motion picture works are often created by using, adapting some already existing writer's work; in this case in accordance with Section 6 (10) adaptation requires the consent of the author of the original work used except when the motion picture work is so different from the work used that compared to it a new original work is created. Motion picture works should be distinguished from transmitting some existing musical work over to a roll of film, which is regarded identically as reproduction; consequently, recording the stage performance of a play (opera) on film is nothing else than public performance of a play.
In a motion picture work reproduced music which can be separated from the motion picture work is regarded specially; in this relation music must be considered as music in musical works compared to the words. Sound films are created by uniting pictures and sounds relating to the actions and events that constitute the object of the work, to which special author's rights regarding motion picture works must be applied. The legal consequence of the above is that while public performing rights of motion picture works are to be acquired from the film producer or film rental company, the public performing rights of the accompanying music requires the consent of the composer of the music or the person who has public performing rights of the musical work due to author's right.
To the question who should be considered the author of the motion picture work created through the work of various persons, Act LIV of 1921 gives no answer[358], the only thing it contains is that motion picture works, provided that they have been given individual and original character by their author, will be as such covered by protection.
The fact that the subjects of author's rights are those who have created the motion picture work by their activity is significant to the extent that in spite of the devolution of their author's rights they continue to be entitled to moral rights; so, only rights of sale will devolve unrestrictedly and exclusively to the entrepreneur. On the other hand, the authors of writer's and musical works used for making the motion picture work do not belong to the scope of the above mentioned persons; accordingly, their author's rights related to their works can devolve to the entrepreneur solely through transfer and within the frameworks of transfer. Usually, also for motion picture works, the rights due to the author of a work possibly used for them will remain untouched.
In accordance with Section 6 of Act LIV of 1921, the author can always take action against anybody whose work has been made by using, adapting his work without his permit without a new original work having been created, furthermore, can take action when such unauthorised use, adaptation has been carried out indirectly, on the basis of another work directly remaking the original work. In accordance with the act, the exclusive public performing rights of the

[357] Szalai 1922b 43. ff.
[358] Szalai 1922b 44.

motion picture work is due to the author of the work. Public performance of motion picture works lies in playing the roll of film in public, as a result of which the actions, events constituting the content of the work are expressed to the audience in the connected series of ceaselessly changing pictures on the projection screen—accompanied by sounds in sound films.
In accordance with Section 75[359] the term of protection of public performance of motion picture works, if the work is regarded identically as writer's works or fine art works, lasts for fifty years, while for motion picture works that are covered only by protection due to photographic works the term of protection is fifteen years. As the law left the question who should be considered the author of the motion picture work unanswered, it must be declared by explanation to the act from when the protection of motion picture works should be calculated where the names of the persons who have brought contributions to the making of the work are more or less known. As several persons have brought contributions, it would lead to obvious difficulties if it were necessary to pay regard to each specific author who has brought contributions to the making of the work with respect to the protection of the completed motion picture work.[360]
Act III of 1969 covers photographs, figures and visual aids with protection as activities related to author's creative work, but, as a matter of fact, their protection is not identical with the protection of writer's works; instead, it is confined to separately provided rights. Assessment of the rights is conditional upon the name of the maker and the year of making public being indicated on the demonstrative figure or visual aid, and the term of protection is restricted to fifteen years by the act. As a matter of fact, the cases of the so-called free use and use without the author's consent prevail within the scope of activities related to author's creative work too.[361]

VI. 3. Rights related to copyright

VI. 3. 1. Protection of copyright related rights

Sections 73–75 of Act LXXVI of 1999 grants exclusive rights to performers to reproduce and distribute their performance, which is addition compared to formerly effective law. The scope of exclusive rights extend to the peculiar case of communication to the public when the performance is made accessible to the public in such form that members of the public can choose the place and time of access individually. These rights apply not only to exclusively audible performances but also to audio-visual performer's performances. Regarding the latter, however, the permissive rule of the act sets out from the fact that, with certain exceptions, the producer of the film acquires economic rights if the performer consents to fixation of his performance in a motion picture work; however, the act is more flexible than the formerly effective law since it allows contrary stipulation.[362]
Producers of phonograms have already been entitled to the right of reproduction and distribution, although the formerly effective regulation used different terminology. Here, just as regarding performer's rights, regulation of *on demand* communication to the public, acknowledgement of exclusive right of producers of phonograms with regard to this form of use is a new element. The relevant international treaty (WIPO) has extended claim for fee, also regulated in Section 50/C of Act III of 1969, to indirect public performances. Directive

359 Szalai 1922b 45.
360 Alföldy 1936. 177. f.
361 Petrik 1990. 273. ff.
362 Gyertyánfy 2006. 375. f.

92/100/EEC regulates rights of producers of films as copyright related rights. Definition of the producer of a motion picture work is set out in Section 64 (3), this definition governs in application of related rights provisions too. The act acknowledges the economic rights due to film producers only to the extent necessary for complying with the Directive.

6. 3. 1. 1. Protection of performers

Act XVI of 1884 grants public performing rights of theatre plays, musical works and musical plays to the author. Theatre plays and musical plays are different from writer's works that exclusive public performing rights are added to the rights due to the author (reproduction, making pubic and marketing). The right of mechanical reproduction and public performing rights are different from each other, are separable from each other and can be transferred separately; for this reason, when the author delivers the work to the publisher for mechanical reproduction, the publisher will not acquire exclusive public performing rights and vice versa.
Section 50 regulates details of public performability of theatre plays and musical plays.
Section 51, contrary to the former, allows public performance regarding musical works. The lawmaker saw the reason for this rule in the fact that usually the aim of printing musical works is to make it possible to play them, and in this case it is not authoritative whether the work is transmitted to a smaller or larger number of listeners. It is necessary that the author should declare expressly the performing right of the work on the title page or at the beginning of the work on each published copy, for reservation applies only to the edition on which it is indicated because in this case all editions must be considered original edition; there is no need to have this right entered in the register.[363]
The authorised translator of the work is regarded, with respect to public performance of his translation, identically as the author. The translator of a play can prohibit performance only of the translation made by him, but he cannot forbid everybody else to translate and perform the play; however, the author of the play can prohibit performance of the translation if he has reserved the right of translation in accordance with Section 7, has fully completed translation in six months and has notified it for being registered. Translation of a work will be unlawful if it is made public under reservation of translation rights, within the five years of term of protection. Adaptation will be unlawful when an adaptation that cannot be considered a new, individual composition is published without the consent of the composer of the musical work. Public performance of both of them implements infringement of copyright; if, however, the musical work has already been published in duplicated form and has been offered for sale and the author has not reserved performing rights on the title page or at the beginning of the work, then the author cannot prohibit either the performance of the musical piece or performance of abridgements made of it.
Term of protection that the act provides for public performances against infringement of copyright is as follows. During the author's whole life and for fifty years from his death protection will be given to the theatre plays and musical plays that:

– have not been published either in reproduced form or public performance yet,
– have not been published in reproduced form yet, but have already been performed in public under the author's real name or acknowledged literary name,
– have been published in reproduced form under the author's real name or acknowledged literary name,
– have been published under pseudonym or without any name, but their author or his legal successor have during the fifty years deadline notified the author's real name for being registered,

[363] Knorr 1890. 147. f.; Kenedi 1908. 155. ff.

– have been published under pseudonym or without any name, but have been made public during the fifty years deadline.

Protection of translation of theatre plays and musical plays that have been published simultaneously in several languages extends to five years from publication of the original work. Protection of translations of theatre plays and musical plays for which the author has reserved translation rights extends to five years from first publication of the authorised translation.[364]

The calendar year of the first publication of the work or the translation or the year when the author died need not to be calculated as included in the above terms of protection. For theatre plays and musical plays that have not been made public at the time of their first public performance, term of protection must be calculated from the day of first performance.[365]

Section 56 sets up a presumption regarding the author of works not published yet but already performed in public. The author is entitled to submit a claim in case of unauthorised performance of theatre plays, musical works and musical plays not published yet but already performed in public. Regarding theatre plays, musical works and musical plays published under pseudonym or without any name, copyright will belong to the publisher, or, if no publisher is named, to the consignee. Consequently, these measures imply the presumption that regarding theatre plays, musical works and musical plays that have not been published yet but have been performed in public already, the person who is named as author in the notice advertising the performance can be considered the author.

Penalties of infringement to theatre plays, musical works and musical plays are set out in Section 57.

To impose the prescribed penalty on the unauthorised performance, the act, on the one hand, demands that the performance is held wilfully or negligently. The penalties determined are the same as those for infringement of writer's works, with the difference that confiscation cannot be considered as an option in this case.

Fine and compensation will be imposed primarily on the person who performs the work in public, also the person who proposes or urges to hold public performance, i.e., who assists as instigator. Other parties privy to the act can be involved in infringement, who are to be punished in unauthorised performances just as in infringement of copyright.[366] Attempt at public performance cannot be punished.

Section 58 sets the rule of compensation for damage. Unauthorised performance of theatre plays or musical plays can contain only lost profit *(lucrum cessans)* as loss, which is based on the presumption that the author or his legal successor would have held the same performance at the same place and same time as the unauthorised performer. If, however, it is proved during the lawsuit that the author did not want to hold the same performance, and he could not have intended to do so either, or, even if he had held one, he would not have drawn any profit or loss from it, then, based on general rules, he could not claim lost profit. To ensure that by referring to the above the author's loss and indemnification should nevertheless not become impossible in each occasion, the act declares that the person who holds unauthorised performance must every time pay compensation for damage, specifically the sum total of the income received, without deducting any costs incurred. However, during the lawsuit it might be revealed that no income has arisen from the performance, or the injured party cannot prove this, then the amount of compensation will be determined by the court. The same is true when the perpetrator is not responsible either for malice or negligence; he must pay compensation up to the extent of enrichment.[367]

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364 Knorr 1890. 82; Kenedi 1908. 159. ff.

365 Knorr 1890. 82.

366 Knorr 1890. 157. ff.; Kenedi 1908. 166.

367 Knorr 1890. 157. ff.; Kenedi 1908. 164. ff.

Applications involved in artistic activity serving mechanical performances are covered by protection equally to the original work, and in accordance with the act this must be properly applied to musical works too.[368] This provision of Act LIV of 1921 applies to the cases where a writer's or musical work is performed by an actor, singer or musician, and their artistic activity is transmitted by gramophone, film or other equipment serving the purposes of mechanical performance, or when the artistic performance is entitled to protection owing to its individual, special artistic character. What performers provide for the public on records, films, by radio is, yet, the result of their original activity; their such performance must be given a share of the gains arising from use of distribution equipment all the more because as a result of using such equipment they lose a part of their audience. Section 8 provides protection for artistic performance serving the purposes of mechanical performance, and refers to the sections that make transmission of the work to equipment serving the purposes of mechanical performance subject to obtaining the author's consent. Performer's artistic performance serving the purposes of mechanical performance is covered by protection equal to that of the original work.[369]

In accordance with the act, gramophone records, films, communication by radio made lawfully of the performer's performance and marketed can be used without the performer's consent. The permit of the composer of musical works is required for public performance or communication to the public by radio of gramophone records made of their protected work. If, in addition to the author's permit, obtaining the performer's consent were demanded to this end, this would restrict authors in sale of their works.[370] Furthermore, it should be taken into account that performers, in recording their performance on gramophone record, are paid remuneration in return for their consent to recording, and there are no causes deserving appreciation that would make it justified that they should be given share of any further use of the records made with their permit.

Performer's performance is protected equally as original works, but this is far from implying that the scope of performer's protection is equal to the author's protection in every respect, regarding its extent, this is to express only that within the restrictions that his artistic performance is protected in accordance with proper interpretation of the act the performer is also entitled to more increased protection than private law protection.

Anybody who unlawfully reproduces, makes public, markets or communicates by radio records, films made of performer's performance commits infringement. In case of sale, distribution of records in unauthorised circulation, the performer can take action.[371] Unauthorised omission or unauthorised indication of the performer's name in records, films, communication by radio covered by protection will also involve legal consequences, and publication of unauthorised alterations of performer's performance on records or films is to be considered infringement. Protection provided for the benefit of artistic performance is due to the performer, and, in case of choirs and music ensembles, to the leader of the choir.[372]

Recording a theatre performance of a play or opera on gramophone or film requires consent of the theatre company, however, duplication, marketing of gramophone or film recordings does not because it is the performer's legal right to give permission for it. Performers can transfer their right to reproduction, making public, marketing of their artistic performance, its transmission to gramophone or film to anybody. In accordance with the act, with respect to their artistic performance performers are entitled to protection solely without prejudice to the rights due to the author of the original work, which means that performers can give

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368 Alföldy 1936. 70.
369 Alföldy 1936. 70. f.
370 Alföldy 1936. 73.
371 Szalai 1935. 28.
372 Alföldy 1936. 73. ff.

permission, solely with the consent of the author of the work under protection, for reproduction, making public, marketing, communication to the public by radio of the gramophone or film recording made of their artistic performance.[373] Failing which, performers will be liable to the author for infringement, but they will be protected against unauthorised user third parties. As in accordance with the act it is the artistic activity itself that is the object of individual protection, for this reason, protection will be due to the performer even if the work performed is not covered by copyright protection.
The consent of the theatre is considered to include the consent of the artists used in the performance as theatres usually settle this issue with their members.
It is an essential provision of Act III of 1969 to include performer's performance in the scope of legal protection. Protection demands performers' consent for recording or transmitting artistic performance, extends the rule of remuneration to them and grants them the right to indicate name and protection against distortion.

6. 3. 1. 2. The radio

Act LIV of 1921 regulates transmission of works to equipment that reproduces the same transmission mechanically or electronically only once,[374] which, however, makes it possible to perceive the work simultaneously at several places in sound or picture for everybody who has a proper receiver, and thereby through the operation of the receiver now apparently mechanical performance is carried out.[375] In accordance with the act, the right of communication by radio, which is enjoyed by authors of foreign works in our country, is due to authors of inland works too. The interpretation of the act contains, on the one hand, the protection that the Rome Convention provides for the author, and, on the other hand, what the Rome Convention deems necessary to specifically underline.
Although works outside the scope of these works can be performed in public without special author's licence, even these works shall not be communicated to the public by radio without the author's permit.
It is allowed to transmit the work from radio receiving station by wire through secondary stations placed near the receiving station, on which subscription fee is paid just as by direct users of radio receivers. Owing to payment of the subscription fee, connecting/turning on such stations does not injure the author's interests; it is not regarded identically as public communication by loudspeaker. Only by radio broadcasting to unlimited number of audience is it forbidden to transmit public performance of works whose public performance is not reserved for the author.[376]
Changes can be subjected to the scope of this statutory provision only in the event that at the same time it is a case of direct appropriation, alteration, reworking of the work referred to in the act because otherwise minor changes made to the work subsequently fall within the scope of other aspects. And if a new original work is created through using a work, or use of certain elements of the work has been carried out that is basically different from the work used, then reproduction and sale of the new work will no longer require the consent of the author of the original work, and in this case sale of the new work cannot be considered infringement. The question whether a new original work basically different from the work used has been created, which may lay claim to copyright independent of the author of the work used, will be decided by the judge paying regard to the circumstances of the case by hearing an expert. The author

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373 Szalai 1935. 33.
374 Szalai 1935. 83.
375 Alföldy 1936. 59. f.; Szalai 1935. 79.
376 Alföldy 1936. 63. f.

can always take action against anybody whose work has been created by using, adapting the author's work without his permit without a new original work having been created, and can take action when the unauthorised use, adaptation has been carried out indirectly on the basis of another work directly unlawfully remaking the original work.[377] In this case, if the user, adapter did not know about the fact that the used, adapted work was an unauthorised remaking (plagiarism) of another work (lack of malice), but with due care they could have known about it, then the author of the original work can hold them responsible for infringement caused by negligence. If the user, adapter has been innocent, they will have liability determined for infringement.[378]

6. 3. 1. 3. Protection of authors of databases

The act complies with provisions of international treaties as a joint result of general and special rules; it does not qualify software as literary work, however, regarding them, together with the special provisions set out in Chapter VI, the general rules applicable also to collected works govern.[379]
Chapter III and Chapter VI of the act regulates software related economic rights and restrictions of such rights; making the so-called decompilation possible (Sections 59–60) is especially important.
Concerning databases, the act uses the codification technique applied for software: it determines solely deviations from and peculiarities compared to the general rules. In this field again, provisions of several international treaties set the direction of codification.
Sections 60/A–62 of the act provides only for copyright protection of databases, although the directive has introduced special—not copyright—protection of non-original databases.

VI. 4. Consequences of violation of copyright

Hungarian Criminal Code provides sanctions for the most serious cases of violation of copyright by determining the state of facts of infringement (usurpation). In practice it is rarely applied; usually civil law means must be used against occurring violations of rights; therefore, it is an important task of the act to develop methods in the field of civil law consequences that are suitable for repressing unlawful conduct and efficient redress of injuries. The principle of separating moral rights from economic rights followed by the act prevails also in determination of legal consequences; for this reason, it contains special legal consequences in case of infringement of moral rights. The act sanctions infringement of economic rights usually by compensation for damage.
Compensation for damage is mostly equal to the fee due to the author in the case of lawful use. This consequence itself does not represent a repressive factor: the unauthorised user's risk is no more than he pays back the amount that he would have been obliged to pay anyway in case of conclusion of contract according to rules. For this reason, in each case when unauthorised use can be imputed to the user the act prescribes that the court proceedings in the case must impose the amount also as a fine to the debit of the user; which fine can be mitigated by the court solely under circumstances that deserve appreciation. This fine that can be imposed in civil proceedings is a peculiar institution, its introduction rests basically on the deliberation that in terms of legal policy it would be improper if the court awarded fine-type

377 P.I. 3165/1934.
378 Alföldy 1936. 65. f.
379 Gyertyánfy 2006. 432.

extra service to be discharged by one of the parties for the benefit of the other party. Accordingly, the implementing decree of the act will specify the public benefit goal on which the fine so received must be spent. Consequences of infringement of copyright must be as appropriate applied to cases of infringement of the so-called neighbouring rights too.
The system of legal consequences corresponds with rules in force in the rest of the fields of intellectual property.
The legal institution of fine that can be imposed in case of infringement of rights imputable to the user, however, must be terminated. The institution of copyright fine comes from the period of planned economy; originally it was due to the legal predecessor of the Ministry National Cultural Heritage and the Central Statistical Office. In the present system of civil law consequences, when in case of infringement of copyright, deprivation of the offender's enrichment can be requested from the court in addition to compensation for damage, and it is possible to enforce criminal law consequences, in terms of retaliation of infringement of rights it does not seem to be reasonable to maintain the institution of the fine. It is an outdated institution; it can be disputed in principle too, since it punishes infringement of private titles by obligation to make payments for the benefit of the State.
The contracts concluded in December 1996 under WIPO stipulate that proper legal protection and efficient legal means must be provided against circumvention of technological measures that copyright owners apply in exercising their rights in order to prevent activities not permitted by them or rules of law.

VI. 4. 1. Infringement of copyright

In accordance with Act XVI of 1884, infringement of copyright is implemented through exercise of the author's exclusive rights by an unauthorised person; acts implementing infringement can be various.
Infringer is the person who makes an alien intellectual work public as his own; thereby he deceives the buyer of the reprinted work, who for that matter does not incur any loss, and not the author. The sate of facts of the offence of infringement of copyright requires that the original work (which is to be reprinted) should belong to the scope of writer's works, the author's work should be reproduced, reproduction should be carried out mechanically, and mechanical reproduction should be performed without the copyright owner's consent. Having studied the act profoundly, it can be declared that mechanical reproduction is reproduction where several copies of the writer's work are produced by external appliances or aids simultaneously, at the same time, or where procedures apply technological means that enable production of a large number of copies in such form that the entire work or a part of it is produced at the same time.
It is indifferent whether the author intends to make his work public or not since works not meant to be made public ever by their authors are also covered by protection. Also, it is irrelevant whether the reproducer benefits from the activity or not because anybody who markets an alien author's work for charitable purposes or free of charge, without the author's consent, also commits infringement of copyright.[380]
Infringement of copyright means unauthorised reproduction of alien author's works. Unauthorised reproduction can be carried out in whole or part or connected with the reproducer's intellectual activity. The implementation of the state of facts of infringement of copyright does not necessarily require that the work should be reproduced word for word; an expert should decide if the partly supplemented work is considered reprint. Partial reproduction is equal to full reproduction. This case, however, calls for circumspection since

[380] Kenedi 1908. 135.

the act allows to quote smaller parts of a work already made public word for word, or to adopt already published papers in reasonable volume and form into works deemed larger independent scientific works, for ecclesiastical, school and educational purposes, with the source specified. It will qualify infringement of copyright solely when a fragment of an alien author's work is published without the reprinter's own contribution as an independent writer's work. The same applies to publication of the abridgement of a work in a foreign language. Quoting in critical activity does not qualify as infringement of copyright either, except when intention to publish the work is behind the critical study, review.[381]

It is a necessary condition of the occurrence of infringement of copyright that reproduction should be carried out without the copyright owner's permit. The person charged with unauthorised reproduction is obliged to prove, if he alleges it, that the reprint has been made with the copyright owner's consent. Consent can be manifested without any required formalities; therefore, it can be given either orally or in writing. Foreign writers' works will be protected solely to the extent that protection is provided for foreigners by the cited act or international agreements. Publication of a work in Hungarian within the territory of the country in another language is a different issue. The answer is again negative; yet, this is no longer the case of unauthorised mechanical publication of the work but translation of the original work without the author's consent.[382]

Mechanical reproduction is to be interpreted as a procedure that makes it possible to reproduce whole works or their specific sheets by using external means. Writing down is the opposite of mechanical reproduction; in this case the original process of producing the work is repeated. Letters and punctuation marks are shaped one by one, individually; yet, the act considers writing down mechanical reproduction when its function is to substitute mechanical reproduction.

Section 6 of the act enumerates the cases that implement the offence of infringement of copyright in accordance with the general concept of infringement of copyright. The act specifies the manuscript not published in printing as the object of protection. Protection is provided solely for the author of the manuscript, irrespective whether the manuscript or a copy of it made in any form is lawfully in possession of another person.[383]

Oral presentations are usually held either freely or on the basis of a manuscript by reading—in the latter case there is a (written) writer's work and reading it corresponds to copying or duplicating it; so, it is clearly covered by protection. Free presentations, however, are not writer's works because they are held not for the purposes of putting them into literary circulation; in spite of that, the act provides protection for them in certain cases. As a matter of fact, these presentations must also meet the requirement that they should be suitable for being the object of literary circulation. Protection is not influenced by the fact whether the person holding the presentation has intended to reproduce it or sell it as literature**.**

In accordance with the provision regulating publisher's transactions[384] the author commits infringement of copyright against the publisher when he publishes the work assigned by him to the publisher again at another publisher or in his own edition. It is regarded identically as the above when the author has his work published in the edition of his complete works, without having applied for the publisher's consent or otherwise being entitled to do so. The publisher commits infringement of copyright when it issues the work in more copies than it is entitled to, or when it carries out a new edition in spite of the contract or the law, or when it separately publishes papers assigned to literary or scientific periodicals or includes them in a collected work.

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381 Kenedi 1908. 67.
382 Knorr 1890. 28. ff.; Kenedi 1908. 90. ff.
383 Knorr 1890. 31. f.
384 Section 517 of Act XXXVII of 1875

Section 7 expounds cases of infringement of copyright that arise from translation of the original work without the author's consent. Translation of a writer's work into another language should be considered infringement of copyright in accordance with general principles, since the translator communicates the thought and original form of the work, and changes the language only. However, practice has narrowed the scope of protection: it covers only the language in which the author has made his work public. As legislation allowed reprinting foreign works, it had to permit their translation into Hungarian too, to enable transplantation of significant alien literary works into Hungarian literature through translation. When a work published in several languages at the same time is published in translation into one of these languages, this is considered infringement. The reason for this prohibition can be that if, for example, a work is published both in Hungarian and German, and then somebody translates the German copy into Hungarian, then in content it is equal to reproduction of the original work issued in Hungarian. In this case it is irrelevant whether editions in different languages are from a single author or not. The term of protection in this case is five years; the reason for this short period is that translators would be injured if a foreign author, expecting his work to sell well in Hungary**,** had it published in Hungarian, in addition to the edition written in the original language, thereby providing himself with longer term of protection. It should be noted that this five years' protection applies to right of translation only because it is protected against reproduction just as any other original work.

Except for the cases expounded in the above paragraph, the act does not qualify translation of a work as infringement of copyright; yet, it gives the option to authors to ensure that others should not translate their works instead of them. They can do that by clearly reserving translation rights on the title page or at the beginning of the original work, and by ensuring that the translation comes out indeed within the time frame set out in the act, or by notifying the translation for registration. The act stipulates that the author who reserves translations rights shall make a part of the translation public within one year, or else the right will be lost, and the complete translation shall be made within three years. Registration, that is, notification to a public authority is required to enable the person who intends to translate the work to make sure that the author has indeed asserted right of reservation. Also, the act deems translation of manuscripts not published yet or presentations, recitations, readings held for education, entertainment purposes infringement of copyright.[385]

Section 8 states that translated writer's works—irrespective whether the translator has had translation right, or if translation rights reserved for the author of the original work have been injured by such translation—are provided with protection equally as original works. Section 9 of the act regulates the exceptional cases when author's rights are restricted.

General literary circulation demands that articles of newspapers and periodicals should be used freely since very rarely does the original newspaper or periodical suffer any pecuniary loss thereby.

Section 10 declares that statutes and decrees must be taken out of the scope of public files; their publication is regulated in a separate act, which stipulates that it is the State's exclusive right to publish and sell translations of statutes and decrees, which can be arranged for solely by the Government. The Minister of the Interior defines the forms of publishing and sale, makes arrangements to ensure that such editions should be easily obtainable throughout the territory of the country, determines the price of specific copies, and can apply administrative measures to seize editions published or sold unlawfully.

Officials of lawmaking must transfer the works written by them to the State, who, in accordance with this act too, is exclusively entitled to reproduce them, which right unambiguously belongs to author's rights and as such is provided with protection.

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385 Knorr 1890. 34. ff.

Finally, the act on copyright provides protection for works published by legal persons. It follows from the above that the State has copyright over statutes and decrees published in its own name as writer's works, however, this right is not original but derivative, more specifically copyright derived from civil servants as natural persons.
Section 58 properly extends the provisions pertaining to legal consequences of infringement to public performing rights; this section does not refer to Section 22, which in its entirety is not suitable for being extended to public performance. It is certain, however, that commercial use mentioned there can be carried out through public performance.[386] Section 59 properly extends rules set out under writer's works with regard to judicial proceedings, copyright expert committee, limitation and registration, on condition that they are suitable for it, to public performing rights.
Section 61 uses the term "remaking" in summary for any act that infringes copyright of fine art works to be able to contain various conducts of the widest scope. Remaking is different from reprint to the extent that committing this act does not require solely mechanical reproduction but any imitation by which, actually, the original work is produced. Regarding fine art works, it is unauthorised remaking and not making public that the act prohibits, for the right of making public and marketing belongs to the author, which is not lost and not restricted by the work being made public by somebody else instead of him. Remaking can be committed by several persons jointly, who are to be punished as perpetrators or parties privy to the act. A perpetrator is the person who prepares remaking or under whose assignment preparations are made. Persons who act under assignment given by others must be considered abettors, in this case again the general rules applicable to parties privy to the offence must be applied to them.
In accordance with Section 62 of the act, imitation is different from remaking: the latter conveys the artistic content of the work remade, while the former constitutes borrowing of the technique, form of representation of the artist's specific works only, as such imitation does not convey the material content of a work; for this reason, the act does not qualify it as infringement of copyright.
Although the act refers photographs to the scope of copyright protection, and in Section 71 it describes the possibility of their infringement, with respect to portraits Section 72 contains special regulations.
Act XVI of 1884 on copyright does not stipulate against what attacks, what persons it desires to protect authors. The act takes the identity of the person infringing copyright into consideration only in the event that the attack has been committed abroad, and even then solely to the extent whether the perpetrator is a Hungarian citizen or not. Act LIV of 1921 calls the concept of violation of copyright infringement. Without the consent of the author (including his legal successor) either reproduction or making public or marketing of the work itself is sufficient for infringement of copyright. One of the forms of unauthorised reproduction is plagiarism. We can speak about plagiarism when somebody communicates somebody else's intellectual product as his own. Also, plagiarism is realised when the infringer does not reproduce, make the whole work public word for word but carries out the above with changes, inclusions, deletions, in other words, by reworking that conceals infringement or under a new title, other author's name. Use, reworking of somebody else's work which results in a new original work is not plagiarism.
If somebody makes his own work public unlawfully under somebody else's name, he will be responsible for prejudicing another person's personal rights in accordance with general private law only. The author is restricted in new use, adaptation of his own work already published to the extent that thereby he shall not prejudice the rights of the person who has

386 Kenedi 1890. 165. ff.; Knorr 1890. 146. ff.

acquired copyright from him on his already published work. The act forbids unauthorised reproduction by any procedure. Infringement will have been implemented already when the first copy of a work reproduced in spite of the law or the first copy of unauthorised remaking has been made; the act, however, allows production of a single copy free of charge without the author's consent, when it is intended for non-commercial use. Producing more copies than the permitted single copy is also production of a single copy against a fee; furthermore, production of a single copy free of charge but for commercial use, when the author's consent is missing, will establish infringement of copyright one by one. Commercial use is to mean use beyond the scope of private life for profitable or business purposes. The produced single copy can be used even for presenting the work by optical equipment only in the event that presentation is free of charge, non-commercial; otherwise, commercial presentation as reproduction will become infringement. Presentation of already published writer's and musical works by optical equipment does not require the author's consent, and only presentation through phototelegraph, photoradio to an unlimited number of audience is bound to the author's special permit.

Section 6 of Act LIV of 1921 deals with infringement of copyright in details. The author has moral and economic interests in ensuring that his work should not be made public in spite of his will; therefore, only he can be vested with the right to communicate his work and its content for the first time.

Even if the manuscript or reproduced copy of the work has been taken possession of by somebody else lawfully, thereby copyright with regard to the work will not devolve without any special transfer; it follows from this that copyright will be even less due to anybody purely on the grounds that he has acquired ownership right of the publication that embodies the work. The act forbids reproduction, marketing, making public and communication by radio of presentations, recitations, readings without the author's consent only in case it serves educational or entertainment purposes. Presentations, recitations and readings to this effect without the author's consent cannot be published in newspapers either.[387]

The publisher commits infringement to the author's injury if it publishes translation of the work, or makes unauthorised changes to the work; if it issues a publication where it breaches the author's orders regarding the shape and price of copies; if it issues a new edition unlawfully; if it publishes a collected edition instead of single works or single works instead of a collected edition. Also, the publisher commits infringement when it produces the work in more copies than it is entitled to in accordance with the contract.[388]

In the event that the author makes changes subsequently to the work not prejudicing the publisher's lawful interests and the publisher publishes the work omitting such changes, this edition is to be considered an edition carried out in defiance of the law or contract and so will be qualified infringement by the publisher. And if the publisher refuses to publish a work with changes made subsequently by the author that prejudice the publisher's lawful interests, and thereupon the author himself publishes or causes to publish the work with such changes, then the author will commit infringement in defiance of the law or contract.[389]

If, however, the author or the publisher is in breach of the contract in any other form, then the legal consequences determined in private law will be incurred. The author will be responsible for the offence of infringement if the author, having transferred copyright of all his works to be created during a determined period to somebody under contract, transfers copyright on his work created during the contractual period to a third party, contrary to the contract, although such copyright has devolved to the other party from the first, and this third party publishes the work. The same applies to an individually determined work to be created in the future. If,

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387 Alföldy 1936. 47.
388 Alföldy 1936. 49.
389 Alföldy 1936. 49.

however, the author has committed himself to somebody merely to write a certain number of works for him for publication, then this person will acquire copyright on the work completed later only in the event that he makes a special agreement with the author on publishing that work, without that the author can freely dispose over the completed work against third parties, and will be responsible for failure to fulfil obligations in accordance with general private law. The above, in a wider sense, is applicable to publisher's transactions whenever publication is in conflict with the contract concluded with the person whom the author has transferred his copyright to.[390]

The provisions of the act shall be properly applied to public performances; therefore, anybody who performs or causes to perform a theatre play, musical work, musical play or motion picture work in public in defiance of the law or contract concluded with the author will commit infringement.[391] Anybody who stages a play under right acquired for performance at a determined theatre without the author's consent at another theatre commits infringement in accordance with the provisions of the act. The relevant clauses of the act shall be applied properly to fine art, applied art and photographic works.

If publication, public performance, presentation by mechanical or optical equipment, communication by radio has been unauthorised due to prohibition under the law, then infringement will be implemented. Co-authors' acts regarding publication of the joint work without consent of the rest of the authors will be considered unauthorised if they use the work made jointly without the other co-author's consent, unlawfully. If a co-author disposes over only his own separable part, then the other party will be responsible merely in accordance with general private law.[392]

The provisions of the act protect the author against unauthorised adopting of news of newspaper correspondence offices. Such companies deal with gathering reports and telegrams on daily events, and, having collected and reproduced them in a special edition, make them available to subscribers, and thereby subscribers acquire right to directly adopt news. However, newspapers that are not subscribers of such companies can adopt their reports and telegrams only in the event that the reports and telegrams have already appeared in the newspaper entitled to adopt them. The act considers breach of this prohibition infringement; here it protects activity of gathering news rather than author's intellectual work. If copyright on the so appeared announcement holds, then the author will be entitled to take action in case of further unauthorised adopting. Obviously, reports of newspaper correspondence offices can be communicated to the public by radio without their consent only in the event that they have already appeared in any newspaper entitled to adopt them.[393] It is the newspaper correspondence company that will have the right to take action due to infringement committed to their injury against anybody who adopts news of such company in defiance of the prohibition set out in law.

In accordance with Article 13 of the Rome Convention, it is he author's exclusive right to transmit his work to means, equipment that serves mechanical performance of the work. Mechanical performance is to mean that the equipment to which it has been transmitted is capable of reproducing it mechanically. In legal terms, appliances must be distinguished whether they are able to reproduce the work several times owing to the same adoption, or they are able to reproduce the transmitted work only once but at several places simultaneously. Transmission of the work to equipment that can reproduce the work mechanically repeatedly is to be considered reproduction. Anybody who makes or duplicates a gramophone record or roll of film of the work without the author's permit will commit infringement according to the

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390 Alföldy 1936. 49. f.
391 Szalai 1935. 37.
392 Alföldy 1936. 51. f.
393 Alföldy 1936. 52. f.

law; however, a person who acquires right to transmit a musical work, musical play, play to such equipment and to duplicate the work by such equipment will not be entitled, purely for this reason, simultaneously to right of public performance through such equipment.
The question arises what should be considered infringement of copyright. By the provisions set out in section 9 the act sets exceptions for the sake of general education, criticism, news service of newspapers, publicity of political, administrative and court proceedings.
The given provision inures to the benefit of only independent scientific works, i.e., the benefit of works that, in terms of their content, constitute mostly their author's own intellectual product, and does not contain merely materials borrowed from others. Borrowing is allowed into collections that serve solely ecclesiastical or school use. To protect the authors' interests, the act deliberately does not mention educational use, in addition to school use; so, it forbids borrowing for the purposes of any education beyond education carried out strictly at school. According to proper interpretation of the act, wilful or negligent failure to specify the source or the author is offence, and will involve legal consequences. Text images, figures, drawings set in published works, on condition that they are protected as original works, are regarded identically as specific minor parts of larger writer's works in terms of the rules properly applicable to them; consequently, they can be included again only in independent scientific works or solely in collected works serving ecclesiastical and school use subject to specifying the source or the author.[394]
In accordance with paragraph 2, except for literary and scientific papers, other newspaper articles can be used in other newspapers, except when reprint is expressly forbidden, but the source and the author possibly indicated in it must be clearly named. So, borrowing literary articles requires the author's consent also in the event that prohibition of reprint is not indicated on them.
In case of using newspaper articles in newspapers these provisions cannot be applied in the event that the article has appeared or is used in a periodical and not in a newspaper. In accordance with Section 10 of Act LIV of 1921, separate rules of law govern reproduction, making public, marketing of statutes and decrees.
In accordance with Section 18 of the act, prejudicing copyright is infringement; copyright is covered by both criminal and private law protection.

VI. 4. 2. Penalties

It is in the chapter *Penalties* that Act XVI of 1884 sets forth regulation, sanctions of infringement of copyright and other unlawful conduct related to it.
The state of facts distinguishes three forms by the content of consciousness related to the act: malice, negligence and accidental infringement. The perpetrator commits malicious infringement if with the aim of making a writer's work public he carries out or causes to carry out mechanical reproduction, being aware of the fact that thereby he prejudices another person's copyright. The perpetrator commits negligent infringement when, without being aware of the unlawfulness of his act, he carries out or causes to carry out mechanical reproduction of a writer's work, and by making it public he prejudices another person's copyright, although with due care he could have avoided this injury.[395]
To declare offence, it is not necessary that the writer's work should be reproduced for distribution since Section 5 of the act unambiguously sets forth that mechanical reproduction, making public and marketing of the work, when it is carried out without the copyright owner's consent, must be considered infringement. Section 22 declares that the act becomes completed by the fact that the first copy of the duplication of the work in defiance of the law

394 Alföldy 1936. 78. f.
395 Knorr 1890. 85. f.

has been made, and to declare penalty does not require that the perpetrator should intend to make public and market too.

The subject, i.e., perpetrator of infringement is a person who carries out or causes to carry out reproduction for himself or on his own account so that he could market them as the owner of the so reproduced copies.[396] This is usually the publisher since it is the publisher that makes reproduced copies so that it could market them as its property.

Obligation to compensate for the damage will bind the person who has committed infringement of copyright, or who has induced another person to commit infringement of copyright, or who has been party privy to infringement of copyright, finally, who has wilfully distributed, marketed the unlawfully reproduced copies. In case of attempt compensation does not lie. On the other hand, compensation claim must be distinguished from action for enrichment. For, if the person who has suffered injury has submitted compensation claim only, but later the injury has not been declared (accidental infringement of copyright), the perpetrator cannot be obliged to pay damage up to the extent of his enrichment because it has not been resolutely requested in the claim. [397]

Obligation to compensate applies both to real damage and lost profit. The act contains no measures to determine the amount of compensation. In a strict sense, the basis of damage shall be the value of the items not sold due to unauthorised reproduction from among the lawfully published copies; however, since it is not easy to determine the above in practice, it is more expedient to set out from that fact that saleability of a work is shaped by need and the audience's interest, in other words, just as many of the lawfully published copies would have been sold as many of the unlawfully reproduced ones have been sold—yet, this can be applied only if the original work is completely reprinted. Or else it is the duty of the court to declare the extent of the loss paying regard to circumstances. In setting the amount of damage, it is always mandatory to set out of the price of the original work, since the author has hoped to gain profit from that; so, his loss will be the deficit arising from the price of such copies. Domestic approach represents the view that the gross price should be taken as basis, which means the actual shop price since the public can buy the work only at this price.[398]

If the number of copies made through unauthorised reproduction and sold exceeds the number of sold copies of the original work, then it will be a question whether indemnification from the difference is due to whom. The answer to this can be found in the publication contract, for if the author has transferred copyright without any reservations to the publisher, then his right has completely terminated, and the compensation can be due solely to the person empowered to publish the original work, i.e., the publisher. If, however, the author has assigned his right to the publisher only for publication of a determined number of copies, then compensation payable from the difference will be due to the author because the publisher has already received compensation on copies in stock for sale and its right resting on the publication contract has been fully enforced.[399]

Furthermore, the state of facts provides for the case when the perpetrator is not responsible for either malice or negligence in his act, i.e., he was in error in fact or error in law when committing the act, and acted in good faith (accidental infringement of copyright). Penalty will be imposed on an accidental infringer too, specifically by compensation up to the extent of his enrichment because the lawmaker cannot permit that anybody should gain benefit at somebody's expense from any unlawful act, albeit, innocently. However, he can prove that he has produced enrichment beyond the loss caused to the author, which he can keep, since he must repay it solely to the extent of the damage of the injured party.

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396 Kenedi 1908. 125. ff.; Knorr 1890. 87. ff.

397 Knorr 1890. 95. ff.; Kenedi 1908. 120. ff.

398 Knorr 1890. 92. ff.; Kenedi 1908. 127. ff.

399 Kenedi 1908. 130. ff.

Section 20 provides for parties privy to the act—instigators, abettors and accessories after the fact—and states that the penalties and obligations to compensate applicable to them are determined according to general legal principles. Section 21 sets the rules of confiscation. Equipment necessary for unauthorised reproduction will be confiscated in order to prevent continuation and repetition of infringement. Such equipment will be also confiscated if the perpetrator is not responsible either for malice or negligence because confiscation is not the consequence of offence but a title arising from the author's exclusive right that can be enforced against the possessor of all unlawfully reproduced copies, however, it is allowed to confiscate only the copies that are possessed for the purposes of distribution, but it is not allowed to confiscate copies that have been acquired for own use. Confiscation can be effected only with regard to objects that can be used solely for unauthorised reproduction.

Unlawfully reproduced copies still on hand, which are found in possession of the printer, bookseller, industrial distributor, the perpetrator or the instigator and are confiscated, must be annihilated. Annihilation of special tools intended to be used for unauthorised reproduction means that their shape will be changed so that they could not be used for their original purpose; yet, the material of the tools will be returned to the owner. Annihilation and confiscation can be performed on request, because the author has the right to purchase copies and equipment on hand. The author can exercise this right freely both in case he has suffered any loss indeed and in case he has not because this right of the author can be restricted solely by the right of a third party interested. For, if the author has assigned his work to the publisher for a single edition of one thousand copies, then neither the author nor the publisher can demand to hold unlawfully reproduced copies because thereby the other party's right would be injured. Partly unauthorised reproduction occurs when it affects certain parts of the work only; so, for example, the title page, the foreword, certain pages, full or half sheets. In this case, confiscation can extend only to these specific parts or the equipment necessary for producing them, on condition that these parts can be separated mechanically from the whole work.

Section 22 sets forth the stages of the state of facts of offence. Offence of infringement of copyright becomes completed when the first copy reproduced in defiance of the law has been made; it is not necessary for it to be made public or marketed. If somebody has made only a single copy of an alien work without having planned to make more copies of it, thereby he has commenced but has not finished offence, i.e., his act can be considered an attempt only. Regarding infringement of copyright, attempt can be declared only in the event that mechanical reproduction has already been started. This requires certain preparatory works, without which reproduction could not be carried out, and if preparatory works have been commenced, mechanical reproduction will become possible, i.e., infringement reaches the stage of attempt. The parts and equipment so produced can be also confiscated. If, however, no more than purchasing has been carried out, but other work activities have not been started, we cannot speak about attempt either. To commit offence, the act demands that at least the first copy should have been made in a publishable form. For this reason, if certain parts of the work have been completed only, we can again speak about attempt at infringement.

Section 23 formulates the state of facts of the offence of commercial distribution, and orders to punish it equally as infringement of copyright. As Section 22 considers the offence of infringement of copyright completed by the first copy having been made, therefore, distribution following it cannot be punished as being privy to the act either. This is supplemented by the provision that regards businesslike offering for sale, sale or distribution in other form, if they are committed by the perpetrator deliberately, as an act of committing offence too. If the distributor is responsible for negligence only, he will not be subject to any penalty or obliged to pay compensation because a bookseller cannot be expected to be

familiar with all works involved in bookselling and to know which is considered unauthorised reproduction and which is not.[400]
Thus, conducts of committing offence are offering for sale, sale and distribution in other forms. Distribution in other forms can be any act that makes it possible to acquire, get familiar with the unlawfully reproduced work.[401]
In accordance with Act LIV of 1921, the act implementing infringement will be subject to penalty and can be both deed and omission. Penalty will lie only in the event that the injured party submits his application seeking penalty in action at law. Penalty by fine is the criminal law consequence of infringement; private law consequences of infringement include compensation and confiscation, but the act does not mention claim seeking discontinuance of infringement in the enumeration of the legal consequences of infringement, although it is beyond doubt that the injured party can institute an action seeking measures to oblige the infringer to discontinue the act of infringement and to bar him from repetition or continuance of infringement. The act regulates the issue of compensation to the extent that in case of malice, negligence the infringer will be obliged to give proper pecuniary compensation to the injured party for both pecuniary loss and non-pecuniary loss. Pecuniary compensation extends to damage actually suffered as well as lost profit expected under normal circumstances. The infringer is obliged to recompense non-pecuniary loss, in addition to pecuniary loss caused by infringement.
Judicial practice acknowledged the right of compensation of non-pecuniary loss of the person whom the author has transferred his copyright to. In accordance with the act, the amount of compensation cannot be less than the infringer's enrichment. The infringer is obliged to surrender his enrichment even if it exceeds the pecuniary loss caused to the injured party. In accordance with the act, in case the infringer is not responsible for either malice or negligence, penalty does not lie, and the infringer will be liable up to the extent of his own enrichment only.[402]
In general, enrichment is the amount that is usually paid to the author for the relevant use. Paying regard to general private law principles, an accidental infringer is responsible for enrichment only in the event that he still has the enrichment at the time when he learns of the infringement.[403]
It might happen that the injured party seeks declaration that a legal person has committed infringement to his injury and requests to punish the legal person in its medium specified by name. A natural person named by name can be punished only in the event that he has been sued personally as a party. His penalty and condemnation cannot be decided on the basis of the defence of the legal person involved in the lawsuit; however, if the individual empowered to act on behalf of the legal person has committed offence contrary to the act within the scope of his duties of his employment, then the legal person will be also responsible for the demandable pecuniary and non-pecuniary loss or enrichment. Furthermore, it follows from the provisions of Act LIV of 1921 that if the legal person's enrichment due to infringement exceeds the amount of the loss caused by the natural person, then the legal person will be liable up to the extent of its enrichment. If the acting natural person is not responsible for either malice or negligence with respect to infringement, then the legal person will be again liable to the extent of its enrichment.
It might occur that an article appears in a newspaper, periodical that implements infringement. Responsibility for infringement will undoubtedly bind the person who has sent the article as his own to the newspaper, periodical for publication. However, commission of infringement

400 Kenedi 1908. 135. ff.; Knorr 1890. 105. ff.
401 Kenedi 1908. 135.
402 Alföldy 1936. 91. f.
403 Alföldy 1936. 91.

will be assisted by the person who arranges the compilation of the journal and who has right of disposal over the content and articles that appear in the journal—this person is the responsible editor of the paper,[404] whose criminal liability with respect to infringement committed in the journal must be judged in accordance with general criminal law rules.
Only by deliberation of all the circumstances of the case being judged can it be decided whether the responsible editor has breached the obligation to review binding him. Against the injured party the responsible editor cannot refer to the fact that he has entrusted another person with editing the paper because regarding third parties it must be always presumed that publication has been carried out with the responsible editor's knowledge and approval; so, he can be held responsible by virtue of negligence even in this case. At the request of a person who finds an article published in the paper injurious on the grounds of Act LIV of 1921, the responsible editor is obliged to name the person who has sent in the article as his own for publication. If the responsible editor fails to fulfil his obligation to supply information, he will expose himself to the injured party bringing an action against him, and if the identity of the perpetrator is revealed in the lawsuit, the responsible editor, even if he wins the lawsuit, can be obliged to bear costs in accordance with the provisions of the civil procedure on the grounds that he has given cause for the lawsuit. In case publication of the article can be attributed to the responsible publisher's act, the responsible publisher's copyright responsibility cannot be higher than the responsible editor's responsibility.[405]
In accordance with Section 20, the injured party can request confiscation of the stock of copies produced through infringement and special tools and equipment used for infringement. Confiscation lies only in the event that the injured party has submitted special application to this effect, which specifies the objects in details that are requested to be confiscated. Confiscation can be the object of the relief sought. The stock subject to confiscation is to mean copies that are meant to be marketed, which can be established from the circumstances of the case; it can be a single copy if it has been meant to be sold. Copies transferred from the infringer to the ownership, possession of persons where they are waiting for being sold will be also subject to confiscation. If the judgment has ordered to confiscate the copies in the stock in whole, they must be annihilated. [406]
Application for confiscation can be submitted against those who possess the copies as infringer, seller, or other commercial distributor, public exhibitor; confiscation of copies at members of the public, closed readers' circles, casinos, libraries and collections is not permitted. In accordance with the act, confiscation lies also against the person who is not responsible for either malice or negligence with respect to infringement as well as against inheritors and legatees. In accordance with the act, attempt at infringement will bring about confiscation, what is more, tools and equipment used for preparing infringement can be confiscated too. The injured party can request to use the copies, tools and equipment, but only in the event that third parties do not suffer any legal injury thereby. The above provisions must be properly applied to public performances, fine art exhibitions. [407]
Reasons for confiscation hold in case of advertising that prejudices another person's copyright as preparation, according to the nature of the thing, just as in case of attempt. If the planned reproduction, marketing of a work is advertised by a person who does not have copyright on the work, then such advertisement is suitable for thwarting publication of the work by the person who is actually entitled to copyright. If the unauthorised advertisement advertises a cheaper edition or an edition under otherwise more favourable terms, then everybody will refrain from buying the copies published by the person empowered to do so. By keeping in

404 Alföldy 1936. 93. f.
405 Alföldy 1936. 95. f.
406 Alföldy 1936. 99. ff.
407 Alföldy 1936. 99 f.

circulation the act means offering for sale, sale, distribution in other forms or use of copies. Offering for sale is implemented when the bookseller keeps the copies in stock in his shop ready for sale. Distribution is making the work available to the public or making the work public in other form, but only in case of malice and businesslike manner shall offering for sale, sale, distribution in other forms or use be considered offence that brings about penalty and compensation. The state of facts of this offence can be implemented only wilfully; negligence is not enough.[408]
In accordance with the act, copies kept unlawfully in circulation will be subject to confiscation at the distributor (user) even if he is not responsible for malice or negligence. In accordance with Section 23, offence will be committed by a person who breaches his obligation to name the source and possibly the author as well as who indicates or omits the author's name on the work in spite of his will; consequently, indication of the name of an author with pseudonym or an anonymous author is offence subject to this provision.[409]
This provision must be properly applied to public performances.

VI. 4. 3. Procedural rules

Chapter four of Act XVI of 1884 sums up procedural rules of infringement of copyright. Section 25 determines the jurisdiction rule, which states that infringement of copyright will be judged, based on the lawmaker's will—in spite of its criminal law character—in civil law proceedings. In accordance with Section 26, conducting proceedings on infringement of copyright will always fall within the jurisdiction of royal courts of justice irrespective if the claim seeks compensation, confiscation or penalty. The injured party can freely decide competence of courts of justice; so, he can choose the court of justice of the place of committing the act, or the domicile, residence of the perpetrator, or any of them if the two are not located at the same place; in case of several perpetrators he can choose the competent court of the domicile or residence of any of them.[410]
Section 27 regulates commencement of the proceedings. Infringement of copyright is an act subject to private complaint with request for prosecution, i.e., proceedings can be commenced solely upon the application of the injured party, for infringement contains violation of private law and it is usually not in the interest of the State to punish infringement if the injured party does not require it. It is different in criminal cases and civil cases against whom the injured party is obliged to submit his claim. In criminal actions, in case of several perpetrators, when proceedings can be commenced solely upon the motion of the injured party, then the motion submitted by the injured party against any of them will involve the rest of the perpetrators being subjected to proceedings, i.e., the injured cannot choose from them. In civil actions, however, the injured party can choose from joint obligors; consequently, he can sue one, several or all of them with regard to the same loss. Infringement of copyright, although it is a lawsuit conducted before civil courts, is determined by the lawmaker's intention due to its criminal law nature in such fashion that the injured party should not be able to choose from among those whom the law orders to be punished; so, the injured party is obliged to submit his claim against all the perpetrators known to him. A perpetrator subjected to lawsuit will have the right to name his accomplices having taken part in committing the act, and so the injured party can submit an accessory claim, until judgment is passed, against the perpetrators he has subsequently learned of. It is also in the interest of the injured party to sue all the perpetrators since they are jointly and severally responsible for compensation, i.e., in case of

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408 Alföldy 1936. 104. ff.
409 Alföldy 1936. 106. f.
410 Kenedi 1908. 196. ff.; Knorr 1890. 112.

several perpetrators he will have greater security to ensure that one of them will compensate for his loss.[411]

The act provides the injured party with the right to withdraw his motion any time before pronouncement of judgment; in this case, penalty does not lie. The perpetrator's obligation to compensate will always continue to hold, except when the injured party expressly waives his right to this effect. Also, the question might arise whether the injured party can choose from among several perpetrators against whom he withdraws his claim. Setting out from the fact that he does not have the right to choose from among those against whom he submits his motion, so he does not have right to choose against whom he withdraws his claim; so, if he manifests his intention to withdraw his claim against any of the perpetrators, thereby the rest of the perpetrators will be released from penalty. Claims due to infringement of copyright can be submitted by those whose copyright has been prejudiced or endangered; accordingly, it is primarily the author who is entitled to right of action; however, if he has transferred the right of reproduction, making public or marketing of his work to another person, then such other person can become copyright owner in determining right of action.

This section sets up the reversible presumption that it is the person whose name is indicated on the work as the author that must be considered the author of a work already made public. This presumption is true with regard to the translator and the editor of collected works too because Sections 2–7 of this act states that in the cases regulated therein they are regarded identically as the author.[412] On the other hand, it sets up no presumption that the publisher indicated on the title page of the work as publisher of the work is indeed the authorised publisher of the work, for the publisher's right is set out in contract, for this reason, its right can be proved only by this contract or other tools of demonstration. In case of works published under pseudonyms or without any name, the act allows that the author's name should be subsequently notified for being registered and that it should be entered in the register; this, however, does not provide grounds for the presumption that it is him who must be considered the real author of the work because registration takes place at the unilateral request of the party concerned, and revision by court whether this fact is true is missing; furthermore, registration extends the term of protection only, and does not prove that the registered person has written the work. If the author's real name is indicated on the new edition of a work published under pseudonym or without any name, then the presumption will be valid with regard to the new edition; yet, this will have no effect on the first edition.[413]

If a work has been published in several editions by several publishers, then each publisher will be entitled to assert author's rights but only with regard to its own edition. [414]

If the author has transferred his copyright to the publisher not unconditionally, then he can at his discretion disclose his real name and can prove that he has written the work, and then he himself can take action against any person committing infringement of copyright, for the author has not lost his copyright by hiding behind a pseudonym because the act does not demand that he should have his real name registered in order to maintain right of action. Consequently, the aim of this section is to protect the rights of the author who intends to stay without any name. The other case is when the publisher or the commission agent asserts its right of action as the author's legal successor. For, in accordance with general rules, they could do that by proving that they are the copyright owners through attaching their contract concluded with the author, by which, however, they would disclose the author's name. As this is contrary to the lawmaker's will, it states that the publisher or commission agent indicated on the work will be without any further demonstration considered the author's legal

411 Kenedi 1908. 196. ff.; Knorr 1908. 112. ff.
412 Knorr 1890. 116. ff.
413 Kenedi 1908. 196. ff.
414 Knorr 1890. 117. f.

successor; which, as a matter of fact, does not exclude that the perpetrator could prove that the publisher or commission agent indicated on the work is not the real publisher or commission agent.[415] Section 29 provides courts with the opportunity to proceed with respect to deliberation of evidence in accordance with the theory of free demonstration, which accepts a fact as having been proved not in the case set out in the rule of law but when it is made certain by the court, i.e., it demands the judge's personal conviction resting on reasonable causes complying with general laws.[416]

If the court deems that the evidence submitted by the parties is not sufficient for fully clarifying the circumstances of the case, but it hopes to reach success by continuing the proceedings, the court of first instance will have the right to order to extend the proceedings and conduct new demonstration.

The court can order hearing of experts if it deems it necessary for judging the case profoundly; the court is not bound by the parties' motion in deciding appointment of experts. In general, expert opinion is requested when a technical question arises that needs to be answered by all means in order to determine the fact of infringement, the volume of loss, or the extent of enrichment.

Section 31 of the act, by setting up permanent expert committees, ensures that courts should receive reliable opinion they can base their judgment on. As a matter of fact, courts are not obliged to invite these committees and are not bound by their opinion. Contacted experts must have sufficient technical information, literary and bookseller's experience, knowledge of relevant laws on protection of copyright to be able to give full scope and well-founded opinion; for this reason, the committee consists of persons pursuing various occupations. Rules of procedure of expert committees were governed, temporarily, by the 1876 directive of the German imperial chancellery, which sets out the following: special committees consisting of seven members operate separately for writer's works, musical works, fine art works and photography; adoption of resolution requires presence of five members; resolutions are adopted based on the submission of two appointed experts by majority of the votes cast; in case of equality of votes the chairman will decide the case.

Section 25 of Act LIV of 1921 refers assertion of claims arising from infringement to civil action, which is supported by compelling reasons examined with knowledge of earlier regulation. Section 26 contains merely fundamental causes of competence: proceedings must be commenced before the court of the defendant's domicile. Section 27 stipulates that the proceedings seeking enforcement of both criminal and private law consequences of infringement can be commenced only upon the application of the injured party, and are governed by the rules of civil procedure. Section 28 intends to make it possible—in the lawful interest of the injured party, specifically in case of danger, and in order to prevent occurrence of any further legal injuries and losses—for the court to bar the infringer from continuance and repetition of infringement or to sequester tools, to prevent marketing, further unauthorised production, by temporary injunction, upon the application of the injured party. Before commencement of proceedings, ordering sequestration will fall within the competence of the court of justice on the territory of which sequestration must be effected. In case of several courts of justice having competence, ordering of sequestration can be applied for from any competent court of justice. Sequestration can be ordered in accordance with Section 22 of Act LIV of 1921 against the distributor or user also in the event that they are not responsible for malice or negligence, i.e., if they keep the infringed copy in circulation in good faith or perform the work in public in good faith. Based on condemning judgment, if the defendant has exercised contestation or appeal delaying enforcement, sequestration can be ordered. Ordering sequestration does not lie if the opponent of the party applying for sequestration

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415 Knorr 1890. 118. ff.

416 Knorr 1890. 120. ff.

makes it probable that the complainee has properly acquired right of reproduction, translation, remaking, putting into circulation, keeping in circulation, public performance or presentation. In this case the court will withdraw the sequestration ordered without hearing the parties. Endangering of the plaintiff's claims can be made probable from the mere fact that the defendant can market the work published by it.[417] Even surrendering all of the purportedly existing copies will not lead to exemption from ordering sequestration because the authorised party will be entitled to search for and find copies anywhere in stocks. Sequestration should be preferably restricted to the part of the work, tool or equipment or performance or presentation that contains infringement. During or after effecting sequestration, the parties can make an agreement set out in minutes by the delegate to ensure that the sequestrator could carry out reproduction and remaking, sell the copies in stock, hold public performance, place the amount remaining after deduction of costs fruitfully until the lawsuit is finally decided or sequestration is withdrawn.[418] Section 30 regulates declaration of the fact and volume of loss and enrichment. This provision, however, does not prevent the judge from effecting inquiry and demonstration regarding the issue of pecuniary loss and enrichment, in accordance with other rules of civil procedure. The judge will have free hand especially in declaring the volume of non-pecuniary loss because the volume of such loss can be usually determined only by general deliberation of the circumstances of the case; consequently, declaration of such loss does not depend on particular data so much as declaration of pecuniary loss. Paragraph 2 of the section provides for making the judgment public. Making the judgment adopted on the issue of infringement public in some inland periodical paper can be applied for by the winning plaintiff or winning defendant in case infringement is declared if the court has dismissed the plaintiff's claim based on infringement. The judge will deliberate according to the circumstances of the case whether the party applying for it has any interest in making the judgment public in need of such protection. In this respect it should be taken into account that making the judgment public in a periodical paper incurs significant cost; therefore, obliging imposes pecuniary loss on the condemned party. At the party's request, the court may as well resolve that obligation of publication should be restricted to the enacting part of the judgment.

VI. 4. 4. Regulation of limitation

It arises from the nature of infringement of copyright that legal injury can be redressed properly only within a short time. Among others, it is conditional upon the injured party submitting its claim within a short time because if he fails to do so, it can be presumed that he has not suffered any material loss. For this reason, Section 36 of Act XVI of 1884 shortens the ordinary deadline open for right of action (thirty-two years) to three years in case of infringement of copyright.

Limitation starts from the day when distribution of unlawfully reproduced copies has started; the reason for this is that Section 22 of this act states that offence must be considered completed when the unlawfully reproduced first copy has been made. If limitation started on this day—i.e., criminal law limitation were applicable to it—then the unauthorised reproducer could avoid penalty by making reproduction of as well a thousand copies and keeping it secret until three years have elapsed from making the first copy, then he could distribute them without being punished; that is why the day of distribution in this case is declared as the date of commencement. In case of infringement, limitation starts on the date of distribution, in other words, the day when distribution has started must be calculated as part of the deadline. The court does not need to take limitation into account ex officio.[419]

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417 Pk. V. 6030/1923.

418 Alföldy 1936. 112. f.

419 Kenedi 1908. 141. ff.

The deadline open for submitting the claim in case of committing this offence (identically with the offence of infringement of copyright) is again three years, however, there is a difference as to when this term of limitation begins.
The perpetrator cannot be punished if the injured party has not submitted its claim within three months; however, the perpetrator will not be exempted from obligation to compensate even in this case, because payment of the damage is the consequence of the act and not penalty of the offence. Action for damages must be submitted within three years' term of limitation. In calculation the three months must include the day when the injured learns of commission of the offence or the identity of the perpetrator, and the last day of the deadline will be the day which owing to its number corresponds to the date of commencement.
Section 39 determines the deadline of confiscation and annihilation. Confiscation can be enforced independently as injunction, it is not bound to penalty, i.e., as long as unauthorised copies and their appliances exist they can be confiscated. No deadline applies to it, and it can be applied in spite of the injured party having failed to submit its claim during the term of limitation.
The injured party can submit its right of action within three months from commencement of distribution of the printed publication in the following cases:

- if the author or the source has not been clearly indicated when quoting specific points or minor parts of the already published work word for word,
- in case of adopting already reproduced or published minor papers in limited volume in a larger work that can be considered independent scientific work in terms of its content, or in collections that have been edited from several authors' works for ecclesiastical, school, educational purposes,
- against the person who makes the author's name public in spite of the author's will.

Section 41 states that interruption and rest of the term of limitation are governed by general rules; however, it does not specify if it refers to the rules of criminal law or civil law. As infringement of copyright is "public offence" but proceedings can commence solely upon private complaint with request for prosecution, which is referred by the act to the jurisdiction of civil courts, and the criminal code usually contains measures regarding offences and infractions, it can be said that in this case again a peculiar mixture of the rules of the two fields of law prevails. According to criminal law, limitation is interrupted by the resolution or measure of the court due to the offence against the perpetrator or the party privy to the act, while according to civil law, by commencement of the action, and, in case of offences and infractions committed in the scope of infringement of copyright, by the resolution or measure of the court adopted with regard to the submitted motion. [420]
Limitation will be interrupted only with regard to the scope of object which the claim applies to. Limitation will be interrupted only with regard to the person who the measure of the court applies to. If commencement of the action depends on decision adopted on some preliminary issue (and it becoming final and unappealable), then limitation will rest until such decision.[421]
In accordance with Act LIV of 1921, the proceedings that can be commenced due to penalty and compensation in case of infringement will lapse in three years. The claim seeking compensation for the damage, including the claim that can be laid with regard to enrichment, will lapse in three years too. The act sets compensation claim jointly with limitation of penalty for expediency purposes lest calculation should become more difficult and prosecution of infringement should become more complicated due to different limitation in public circulation. Paragraph 2, by setting up material preconditions, regulates commencement of limitation; accordingly, commencement of limitation is independent of

[420] Knorr 1890. 136. f.
[421] Knorr 1890. 136. f.

when the injured party has learned of infringement and the identity of the infringer. In case of unauthorised reproduction, limitation will commence on the date it is completed; consequently, the injured party cannot take action seeking penalty and compensation due to unauthorised reproduction if three years have passed from completion of reproduction. If the injured party intends to assert his claims arising from unauthorised putting into circulation, he can do that within three years from commencement of unauthorised putting into circulation, irrespective when unauthorised reproduction has been completed. Accordingly, if the infringer has concealed the stock of unlawfully produced copies from the injured party for three years, and as such he cannot be held responsible for unauthorised reproduction, the author can take action due to subsequently occurred unauthorised marketing (putting into circulation), within three years from its commencement. This also applies to the case when reproduction of the copies has been carried out lawfully, but putting the copies into circulation is infringement due to unauthorised changes or lack of indication of the source or for other reasons.[422]

In case of unauthorised putting into circulation, the act calculates commencement of term of limitation from commencement of putting into circulation because putting into circulation is to mean commencement of the marketing of copies, and in several cases the date of completion of putting into circulation could not be determined. The injured party can take action due to unauthorised publication of unlawfully produced copies within three years from it. If only an attempt has been made at reproduction, making public or marketing, then limitation of enforceable compensation claim will begin upon discontinuance of the attempt.[423]

Paragraph 3 sets the term of limitation of the imposed penalty as being equal to the term of limitation of commencing proceedings. The provisions must be properly applied to unauthorised public performance and unauthorised presentation by mechanical or optical equipment.

The proceedings commenced in case of unauthorised keeping in circulation referred to in Section 22 and proceedings seeking compensation for the damage caused will also lapse in three years. In this case, limitation will start on the day when distribution or use was carried out for the last time. In case of offence of infringement, claim seeking penalty can be asserted, even within the three years' term of limitation, only during three months from the date of learning of the fact.

The act removes the claim seeking annihilation, confiscation of copies produced through infringement or the tools, equipment used for producing them—as a claim seeking termination of a permanently unlawful status—from the scope of short limitation and that for the full period of protection. It follows from the nature of the thing that this applies also in case of confiscation that can be enforced due to attempt at infringement or preliminary advertising, although the act does not specifically refer to it. The rules of general private law must be applied to interruption and rest of limitation of claim that can be laid due to infringement or an act regarded identically as that by virtue of damage.

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422 Alföldy 1936. 119. f.

423 Alföldy 1936. 120. f.

Summary

The first form of independent copyright evolved on the analogy of right of ownership at the end of the 18th c.; this state in Europe lasted for almost one hundred years. Analogies drawn from right of ownership were certainly suitable for providing protection for authors' works in corporeal form for the author's benefit. Within the frameworks of the right of ownership approach, however, copyright could not be protected against distortions at all or only insufficiently by violently bending application of law. During the 19th c. in Europe, copyright and patent law codification in the modern sense evolved, consistently enforcing the civil law approach and development of exclusive rights related to intellectual works.

Hungarian regulation of the field of law of intellectual works, basic codices go back to the 19th century. Given the peculiarities of historical development, modern codification efforts evolved with a delay in the Age of Reforms; with respect to copyright the Bills related to Bertalan Szemere are worth mentioning. After suppression of the 1848-49 War of Independence and the 1867 Compromise, basically Austrian laws were applied.

Around the middle of the 19th c., however, literary, scientific and political life in our country flourished, strongly helped by reproduction, by which Hungarian thoughts could be delivered to more and more people desiring changes. Simultaneously with progress, complaints were received on abuses of author's rights. Increasing needs of life and enhancing circulation of intellectual goods as well as politics aimed at liberating the press brought along more independent development of author's rights.

In Hungary, in the beginning, as a result of state law relation, the development of author's rights was similar to the process in Austria, and then, upon termination of this connection, it went through independent progress. The consequences of the Second World War, the evolution of the centrally controlled socialist economic/social system emphasised this requirement all the more. Even at that time, this branch of law preserved its main traditional features, owing to, at last but not least**,** several decades' long memberships in international agreements. The field of law of intellectual works shows permanent progress—without injury to essential principles. Just as in the phase of its evolution, in the appearance of tendencies of modern development, changes in economic circumstances and technical conditions represent the key driving force. General features of historical development are reflected by the progress made in this field of law in Hungary too.

The present volume has set the task to present currently effective regulation through the history of the development of copyright law in our country. This approach enables deeper understanding of specific legal institutions of copyright and their regulation as well as the underlying lawmaker's intention and economic reason. Comparison of the solutions of Act XVI of 1884 and Act LIV of 1921 as well as Act III of 1969 and the currently effective Act LXXVI of 1999 clearly shows the arc of development these legal institutions have gone through, and how regulation of copyright—wanting to meet challenges posed by technological development—has been renewed and has been reinterpreting regulatory concepts again and again.

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